

JUN 8 1989

JOSEPH F. SPANIOLO, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1988

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, et al.

Petitioners,

vs.

ALCAN ALUMINIUM LIMITED AND
IMPERIAL CHEMICAL INDUSTRIES PLC,

Respondents.

On Writ Of Certiorari To
The United States Court Of Appeals
For The Seventh Circuit

JOINT APPENDIX

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Petition for Certiorari Filed February 22, 1989
Certiorari Granted April 17, 1989

140JP

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

Alcan Aluminium Limited – District Court Docket 84-C-6932

August 10, 1984	Plaintiff's complaint filed in U.S. District Court for Northern District of Illinois, Eastern Division.
September 7, 1984	Defendants' motion to dismiss filed.
January 11, 1985	Memorandum Opinion and Order entered denying motion to dismiss.
February 1, 1985	Answer to complaint filed.
June 14, 1985	Order entered reassigning case to Judge Williams.
February 3, 1986	Stipulation of Facts, as Revised, filed; plaintiff's motion for summary judgment filed.
February 6, 1986	Order entered granting motions for leave to file briefs <i>amici curiae</i> on behalf of the Governments of Canada, the United Kingdom, Australia, Switzerland, Japan and the member states of the European Communities (Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom).
February 14, 1986	Order entered granting motion of United States of America leave to file a brief <i>amicus curiae</i> .
March 6, 1986	Brief <i>amicus curiae</i> of the United States filed.

March 28, 1986	Defendants' cross-motion for summary judgment filed.
May 5, 1986	Plaintiff's reply to defendants' cross-motion for summary judgment filed.
July 30, 1987	Judgment of District Court entered, dismissing action pursuant to Memorandum Opinion and Order dated July 29, 1987 (text printed in Appendix B to Petition for Writ of Certiorari at A-21).
August 6, 1987	Plaintiff's notice of appeal filed.
<i>Imperial Chemical Industries PLC - District Court Docket 84-C-8906</i>	
October 15, 1984	Plaintiff's complaint filed in U.S. District Court for Northern District of Illinois, Eastern Division.
January 18, 1985	Defendants' motion to dismiss filed.
January 28, 1985	Plaintiff's motion for relatedness to Action No. 84C 6932 filed.
January 29, 1985	Defendants' letter withdrawing motion to dismiss filed.
January 31, 1985	Orders entered granting motion for relatedness and reassigning case.
February 15, 1985	Defendants' answer to complaint filed.
June 14, 1985	Order entered reassigning case to Judge Williams.
December 2, 1985	Joint stipulation of facts filed.

January 31, 1986	Supplemental joint stipulation of facts filed; plaintiff's summary statement of stipulated facts filed; plaintiff's motion for summary judgment filed.
February 6, 1986	Order entered granting motions for leave to file briefs <i>amici curiae</i> on behalf of the Governments of Canada, the United Kingdom, Australia, Switzerland, Japan and the Member States of the European Communities (Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom).
February 14, 1986	Order entered granting motion of United States of America leave to file a brief as <i>amicus curiae</i> .
February 24, 1986	Second supplemental stipulation of facts filed.
March 6, 1986	Brief <i>amicus curiae</i> of the United States filed.
March 28, 1986	Defendants' opposition to plaintiff's motion for summary judgment filed; defendants' cross-motion for summary judgment filed.
April 29, 1986	Plaintiff's reply to defendants' cross-motion for summary judgment filed.

July 30, 1987 Judgment of District entered, dismissing action pursuant to memorandum opinion and order dated July 29, 1987 (text printed in Appendix B to Petition for Writ of Certiorari at A-21).

August 6, 1987 Plaintiff's notice of appeal filed.

Court of Appeals – Docket No. 87-2239 (Alcan); Docket No. 87-2295 (Imperial)

August 28, 1987 Order entered granting motions for leave to file briefs *amici curiae* on behalf of the Governments of Canada, the United Kingdom, Australia, Japan, and Switzerland, and the Member States of the European Communities (Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom).

September 2, 1987 Order entered consolidating appeals for purposes of briefing and disposition.

September 9, 1987 Motion for reconsideration of order consolidating cases on appeal filed.

September 11, 1987 Order entered granting in part and denying in part motion for reconsideration of order consolidating cases on appeal.

September 24, 1987 Order entered granting motion of United States of America for extension of time in which to file brief *amicus curiae* (corrected on October 5, 1987).

October 19, 1988 Opinion and judgment of the Court of Appeals filed (text printed in Appendix A to Petition for a Writ of Certiorari at A-1).

November 2, 1988 Defendants' petition for rehearing, with suggestion for rehearing en banc, filed.

November 29, 1988 Answer of Imperial to petition for rehearing filed.

November 30, 1988 Reply of Alcan to petition for rehearing filed.

January 9, 1989 Order entered denying petition for rehearing.

January 13, 1989 Defendants' motion for stay of mandate filed.

January 17, 1989 Plaintiffs' opposition to motion for stay of mandate filed.

January 24, 1989 Order entered granting stay of mandate.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALCAN ALUMINIUM LIMITED,)
Plaintiff,)
vs.) Civ. 84 C 6932
THE FRANCHISE TAX BOARD)
OF THE STATE OF CALIFORNIA,)
operating through its Chicago) COMPLAINT
office; Leonard Wilson, individu-)
ally and as District Manager, Chi-)
cago Office of the Franchise Tax)
Board of the State of California;)
and B. M. Rarang, individually)
and as Auditor, Chicago Office of)
The Franchise Tax Board of the)
State of California,)
Defendants,)

Plaintiff Alcan Aluminium Limited ("Alcan"), by its attorneys Lawrence A. Salibra, II, Peter D. Miller and Sidley & Austin, for its complaint alleges as follows:

I

1. Alcan is a corporation organized and existing under the laws of the Commonwealth of Canada. Its headquarters and principal place of business are in Montreal, Quebec.

2. At all times relevant herein, Plaintiff and its subsidiaries engaged in all phases of the aluminum business on an international scale. Alcan is independent of, and operates in competition with, all other major world aluminum producers. Its operations include the mining and

processing of bauxite, an aluminum-bearing ore, the conversion of bauxite into alumina, the generation of electric power for use in smelting aluminum, the smelting of aluminum alloys into semi-finished and finished products, the production and sale of chemicals, transportation services for cartage of raw materials, metal and general cargo, and engineering services.

3. During the relevant time period, Plaintiff's subsidiaries and related companies had bauxite holdings and smelted primary aluminum in seven different countries, produced alumina in six countries, fabricated aluminum in twenty-nine countries, operated sales outlets in over one hundred different countries and maintained warehouse inventories in various international markets. At all times relevant herein, nearly one hundred subsidiaries of Plaintiff operated wholly outside the United States.

4. At all times relevant herein, Plaintiff did not have a permanent place of business in the United States, nor did any of its non United States subsidiaries.

II.

5. Alcan Aluminum Corporation ("Alcancorp") is a corporation organized and existing under the laws of the State of New York. Its principal place of business is in Cleveland, Ohio. Plaintiff indirectly owns all of the issued and outstanding stock of Alcancorp.

6. Alcancorp and its subsidiaries, at all times relevant, engaged in the business of fabricating and selling in the United States aluminum products consisting of aluminum sheet and coil, plate, metal powders and pigments,

electrical power cable, building products, primary ingot and other metal and allied industrial products.

7. AlcanCorp conducts certain of its business operations in the State of California and is duly qualified to do business within the State of California.

III.

8. The Franchise Tax Board of the State of California ("FTB") is an agency of the State of California. It maintains a permanent office for the transaction of its official business within the Eastern Division of the Northern District of Illinois.

9. Defendant Leonard Wilson is District Manager of the Chicago Office of the FTB and maintains his regular place of business within the Eastern Division of the Northern District of Illinois. He is sued herein both individually and in his capacity as District Manager of the Chicago Office of the FTB.

10. Defendant B. M. Rarang is an auditor in the Chicago Office of the FTB and maintains his regular place of business within the Eastern Division of the Northern District of Illinois. He is sued herein both individually and in his capacity as an auditor in the Chicago Office of the FTB.

11. Defendants have the power and duty to administer the Bank and Corporation Tax Law of the State of California, California Government Code Secs. 15700 and 15701, and California Revenue and Taxation Code Sec. 26422, as well as other provisions of the laws of the State of California respecting taxation ("California Tax Law").

Defendants administer the California Tax Law with respect to numerous corporations through their Chicago Office.

PLAINTIFF'S FIRST CLAIM FOR RELIEF

12. The Chicago Office of the FTB is auditing and determining the proper level of taxation on Plaintiff's subsidiary, AlcanCorp. Defendants Raring and Wilson currently have management and supervisory responsibility for that file.

13. Defendant, FTB, has since 1965 computed and assessed taxes not solely upon California's apportioned share of income (all of which is derived from the United States), but on an apportioned share of the total income of AlcanCorp, Plaintiff and Plaintiff's wholly foreign subsidiaries. That method of taxation is referred to herein as worldwide unitary income taxation.

14. Plaintiff, as a result of such taxation, has been required to produce information regarding its non United States activities and this has resulted in an administrative and financial burden.

15. Defendants have and unless restrained by this Court will continue to impose such worldwide unitary income taxation upon Plaintiff and its non United States subsidiaries.

16. Neither Plaintiff nor any of its non United States subsidiaries, however, is subject to the taxing jurisdiction of the State of California. Neither Plaintiff nor any of its non United States subsidiaries carries on business in the United States and therefore is not subject to United States

income taxes. Indeed, each non United States subsidiary of Plaintiff paid or will pay tax due on its net income to its host country during the relevant time period. The imposition by Defendants of such worldwide unitary income taxation constitutes impermissible double taxation, and, therefore, violates the Foreign Commerce Clause of the United States Constitution.

17. Moreover, using worldwide unitary income as a base for taxation, imposes a tax upon Plaintiff and its non United States subsidiaries. The actions of the Defendants, in imposing such worldwide unitary income taxation, has been and would be taken under color of the purported authority of the California Tax Law, and therefore is in violation of the Foreign Commerce Clause of the Constitution.

18. Plaintiff will be irreparably injured by the actions of Defendants described above, unless Defendants are enjoined and restrained by this Court. Plaintiff does not have an adequate remedy at law.

19. This action arises under the Supremacy and Foreign Commerce Clauses of the Constitution of the United States. This Court accordingly has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Secs. 1331, 1337, 1343 and 2201. The amount in controversy herein exceeds \$10,000, exclusive of interest and costs.

20. All Defendants maintain an office and reside within this District. The actions of Defendants which are the subject of this suit, as more fully set out above, would be taken in this District under the purported authority of the California statutes previously cited. Venue is properly laid in this District pursuant to 28 U.S.C. Sec. 1391(b).

PLAINTIFF'S SECOND CLAIM FOR RELIEF

21. Plaintiff repeats the allegations of paragraphs 1 through 20 hereof as if fully set forth herein.

22. An actual and justiciable controversy has arisen between Plaintiff and Defendants herein as to whether the imposition by Defendants of worldwide unitary income taxation upon Plaintiff and its subsidiaries is lawful.

23. Plaintiff seeks a judgment herein declaring that the imposition by Defendants of such worldwide unitary income taxation is void and unenforceable as repugnant to the Constitution of the United States.

WHEREFORE, Plaintiff demands judgment in its favor and against all Defendants as follows:

(a) Preliminarily and permanently enjoining and restraining Defendants, and each of them, and their successors in office, and all persons acting in concert with them, from assessing, levying or collecting any tax upon Plaintiff's subsidiary, AlcanCorp, the amount of which is determined, in whole or in part, by reference to the worldwide income of Plaintiff;

(b) Declaring that the imposition by Defendants of such worldwide unitary income taxation is void and unenforceable;

(c) Declaring that Defendants' imposition of such worldwide unitary income taxation violates the Constitution of the United States;

(d) Awarding Plaintiff its costs and disbursements of this action; and

(e) Granting Plaintiff such other and further relief as the Court deems just and proper.

/s/ Lawrence A. Salibra, II
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/s/ Peter D. Miller
PETER D. MILLER

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

ALCAN ALUMINIUM LIMITED,) No. 84-C-6932
Plaintiff,) (Judge Marshall)

v.)

THE FRANCHISE TAX BOARD) NOTICE OF
OF THE STATE OF CALIFORNIA,) MOTION AND
operating through its Chicago) MOTION TO
office; Leonard Wilson, individu-) DISMISS ACTION;
ally and as District Manager, Chi-) POINTS AND
ago Office of the Franchise Tax) AUTHORITIES
Board of the State of California;) IN SUPPORT
and B. M. Rarang, individually) THEREOF
and as Auditor, Chicago Office of)
The Franchise Tax Board of the)
State of California,)

Defendants.)

TO: PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the defendants will move this Court at the courtroom of Judge Marshall, located in the United States Court House, 219 South

Dearborn Street, Chicago, Illinois 60604 on October 11, 1984, at 9:30 a.m. of that day, or as soon thereafter as counsel may be heard, on behalf of defendants above named for an order pursuant to rule 12(b) of the Federal Rules of Civil Procedure dismissing this action on the grounds that:

1. The court lacks jurisdiction over the subject matter.
2. The doctrines of res judicata and collateral estoppel bar plaintiff from relitigating the same issues resolved in the Second Circuit.
3. Plaintiff has no standing to institute this action.
4. There are two cases pending in two separate California state superior courts involving the identical issues raised in this action, brought by plaintiff's subsidiary corporation.
5. The complaint fails to state a claim upon which relief can be granted.

This motion is based upon the notice of motion filed herein, the points and authorities attached to this motion and the complaint of plaintiff on file herein, together with all other documents in the files of this Court.

DATED: September 4, 1984.

Respectfully submitted,
 JOHN K. VAN DE KAMP,
 Attorney General
 of the State of California
 EDWARD P. HOLLINGSHEAD
 Deputy Attorney General

CHARLES C. KOBAYASHI
 Deputy Attorney General
 Attorneys for Defendants
 Franchise Tax Board

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL	:	
INDUSTRIES PLC,	:	
	:	Plaintiff,
	:	
v.	:	Civil Action No.
	:	84C8906
FRANCHISE TAX BOARD OF	:	
THE STATE OF CALIFORNIA,	:	
operating through their Chicago	:	COMPLAINT
office; and LEONARD WILSON,	:	
individually and as District Man-	:	
ager, Chicago Office of the State of	:	
California,	:	
	:	Defendants.

Plaintiff, Imperial Chemical Industries PLC, by its attorneys, James M. Carter, John B. Lowry, and Sidley & Austin, for its complaint, alleges that:

I.

1. Imperial Chemical Industries PLC ("Plaintiff") is a publicly held, capital stock, company (corporation) existing under the laws of England. Its headquarters and principal place of business is in England (United Kingdom). Plaintiff has, in addition, more than 300 subsidiaries and affiliates that manufacture in more than forty nations and maintain substantial sales organizations in more than sixty nations.

2. At all times relevant, Plaintiff and its subsidiaries engaged in manufacturing or extraction of ten separate product categories: Agricultural chemicals, crude petroleum and refinery products, general (heavy) chemicals,

industrial explosives (Nobel's), organic chemicals, paint and decorative products, petrochemicals, pharmaceuticals, plastics, and synthetic textiles. Manufacture and sale of each product category is operated as a separate business through largely autonomous divisions in the United Kingdom and through separate overseas subsidiaries for each nation. Each product category business has individual organization, structure, and operating procedures. Plaintiff is customarily ranked fourth largest amongst worldwide manufacturing companies engaged in similar businesses by the financial reporting services.

3. Plaintiff and its foreign (to the United States) subsidiaries do not do business in the State of California. At all times relevant, Plaintiff has not maintained a permanent establishment in the United States, nor has any of its foreign (to the United States) subsidiaries maintained a United States permanent establishment.

II.

4. ICI Americas Inc. ("Americas") is a corporation organized and existing under the laws of the State of Delaware. Its corporate headquarters and principal place of business is Wilmington, Delaware. Plaintiff has indirectly owned all of the issued and outstanding stock of Americas since 1971.

5. At all times relevant, Americas and its subsidiaries engaged in manufacturing or selling six of the ten product categories manufactured and sold by Plaintiff and its subsidiaries. These product categories are: Agricultural chemicals, decorative products (excluding

paints), organic chemicals, petrochemicals, pharmaceuticals and plastics. Americas, in addition, manufactures and sells security devices and various aerospace components. At all times relevant, the gross sales of Americas, all of which are subject to Federal income tax as United States source income, have not exceeded 1/15th of the total worldwide sales of Plaintiff and its subsidiaries.

6. Americas conducts certain of its business operations in the State of California and is duly qualified to do business within the State of California. Americas maintains manufacturing facilities and experimental stations in California.

III.

7. Defendants, Franchise Tax Board, are an agency of the State of California. Defendants have the power and duty to administer the Bank and Corporation Tax Law of the State of California, *Cal. Gov. Code* §15700 and §15701 and *Cal. Rev. & Tax Code* §26422, as well as other provisions of the laws of California respecting taxation ("California Tax Law"). Defendants administer California Tax Law through permanent offices for the transaction of official business maintained in Chicago, Illinois, and New York, New York, as well as in California. Defendant Leonard Wilson is District Manager of the Chicago office located within the Eastern Division of the United States Northern District of Illinois.

PLAINTIFF'S FIRST CLAIM FOR RELIEF

8. Defendants have, since 1971, computed and assessed taxes not solely upon California's apportioned share of income of Americas (all of which is derived from United States sources) but on an apportioned share of the total income of Plaintiff and Plaintiff's subsidiaries, including Americas. That method of taxation is generally designated "worldwide unitary income taxation." Defendants, in effect, required combined reporting of Plaintiff's worldwide income with Americas' (United States source) income for purposes of California income taxation.

9. Neither Plaintiff nor any of its foreign (to the United States) subsidiaries are persons subject to the taxing jurisdiction of California. Neither Plaintiff nor any of its foreign (to the United States) subsidiaries are persons subject to United States income taxes. Plaintiff and each of its subsidiaries paid or will pay taxes on taxable income to each host country during all times relevant. Utilizing Plaintiff's "worldwide unitary income" as a base for taxation imposes a California tax upon Plaintiff and its foreign (to the United States) subsidiaries. The actions of Defendants, in imposing worldwide unitary income taxation upon Plaintiff purport to have been and to be taken under authority of California Tax Law, and, therefore, violate the Foreign Commerce Clause of the United States Constitution, Art. I, §8.

10. The United States, the United Kingdom, and all jurisdictions in which Plaintiff and its subsidiaries do business, with the sole exception of California, impose income taxes on Plaintiff and its subsidiaries by the "arm's length pricing method" described in 26 U.S.C.

§482. No other State of the United States has imposed or has threatened to impose taxes on Plaintiff based on "worldwide unitary income taxation." As a result of Defendants' method of computing taxes, Plaintiff has been required to incur administrative and financial burdens and continues to be under such burdens.

11. The imposition by Defendants of "worldwide unitary income taxation" upon Plaintiff and its subsidiaries, therefore, constitutes impermissible double taxation and interferes with the foreign commerce of the United States and the commerce of other nations in violation of the Foreign Commerce Clause of the United States Constitution, Art. I, §8.

12. Plaintiff seeks to have defendants enjoined from imposing "worldwide unitary taxation" upon Plaintiff and its subsidiaries. Plaintiff has been and will be irreparably injured by the actions of Defendants described above unless Defendants are enjoined and restrained by this Court. Plaintiff does not have an adequate remedy at law.

13. This action arises under the Supremacy and Foreign Commerce Clauses of the Constitution of the United States. This Court, accordingly, has jurisdiction over the subject matter pursuant to 28 U.S.C. §1331, §1337, §1343 and §2201. The amount in controversy herein exceeds \$10,000, exclusive of interest and costs.

14. Defendants maintain an office and do business within this District. Venue is properly laid in this District pursuant to 28 U.S.C. §1391(b).

PLAINTIFF'S SECOND CLAIM FOR RELIEF

15. Plaintiff repeats the allegations of paragraphs 1 through 14 in full.

16. An actual and justiciable controversy has arisen between Plaintiff and Defendants whether imposition by Defendants of "worldwide unitary income taxation" upon Plaintiff and its subsidiaries is lawful.

17. Plaintiff seeks judgment declaring that imposition by Defendants of "worldwide unitary income taxation" upon Plaintiff and its subsidiaries is void and unenforceable as repugnant to the Constitution of the United States.

WHEREFORE, Plaintiff demands judgment in its favor and against all Defendants as follows:

(a) Preliminarily and permanently enjoining and restraining Defendants, and each of them, and their successors in office, and all persons acting in concert with them, from assessing, levying or collecting any tax, the amount of which is determined, in whole or in part, by reference to the worldwide income of Plaintiff and its subsidiaries

(b) Declaring that the imposition by Defendants of such "worldwide unitary income taxation" upon Plaintiff and its subsidiaries and affiliates is void and unenforceable;

(c) Declaring that imposition by Defendants of "worldwide unitary income taxation" upon Plaintiff and its subsidiaries violates the Constitution of the United States;

(d) Awarding Plaintiff its costs and disbursements of this action; and

(e) Granting Plaintiff such other and further relief as the Court deems just and proper.

/s/ James M. Carter
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

IMPERIAL CHEMICAL	) No. 84-C-8906
INDUSTRIES PLC,	) (Judge Plunkett)
)
Plaintiff,	) NOTICE OF MOTION
	) FOR BRIEFING
v.	) SCHEDULE AND FOR
	) MOTION TO DISMISS
THE FRANCHISE TAX	) ACTION; POINTS
BOARD OF THE STATE OF	) AND AUTHORITIES
CALIFORNIA, operating	) AND DECLARATION
through their Chicago office;	) IN SUPPORT
and LEONARD WILSON,	) THEREOF
individually and as District)
Manager, Chicago Office of	) Date: Jan. 18, 1985
the State of California,	) Time: 3:00 p.m.
	) Place: Judge
Defendants.	) Plunkett's
	) Courtroom

TO: PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the defendants will move this Court at the courtroom of Judge Plunkett, located in the United States Court House, 219 South Dearborn Street, Chicago, Illinois 60604 on January 18, 1985, at 3:00 p.m. of that day, or as soon thereafter as counsel may be heard, on behalf of defendants above named, for a motion call for a briefing schedule for defendants' motion for an order pursuant to rule 12(b) of the Federal Rules of Civil Procedure dismissing this action on the grounds that:

1. The court lacks jurisdiction over the subject matter.
2. Plaintiff has no standing to institute this action.
3. The complaint fails to state a claim upon which relief can be granted.
4. The court should abstain.

This motion is based upon the notice of motion filed herein, the points and authorities attached to this motion and the complaint of plaintiff on file herein, together with all other documents in the files of this Court.

DATED: January 8, 1985

Respectfully submitted,
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Attorney General
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EDWARD P. HOLLINGSHEAD
Deputy Attorney General
CHARLES C. KOBAYASHI
Deputy Attorney General
Attorneys for Defendants
Franchise Tax Board

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALCAN ALUMINIUM)	
LIMITED,)	
	)	No. 84 C 6932
Plaintiff,)	
)	
v.)	
)	
THE FRANCHISE TAX)	
BOARD OF THE STATE OF)	
CALIFORNIA, etc., et al.,)	
Defendants.)	

MEMORANDUM OPINION

Prentice H. Marshall, District Judge

Plaintiff Alcan Aluminium Ltd. alleges that the State of California's worldwide unitary taxation program, administered by defendants, the Franchise Tax Board of the State of California (the Board) and certain representatives of the Board, violates the Foreign Commerce Clause of the United States Constitution. Worldwide unitary taxation imposes a tax obligation based upon the income of all companies the Board determines are engaged in a single or unitary enterprise. Defendants have moved to dismiss on the grounds of collateral estoppel, lack of standing, and abstention.

Plaintiff, a Canadian corporation, owns approximately one hundred subsidiaries outside the United States. Neither plaintiff nor any of its foreign subsidiaries conducts business in the United States. Plaintiff also owns Alcan Aluminum Corp. (Alcancorp), a New York

corporation with its principal place of business in Cleveland, Ohio. Alcancorp conducts business in California and is subject to the unitary business income tax.

The Board maintains an office in Chicago, and the two individual defendants operate out of the Board's Chicago office. For the purposes of determining Alcancorp's unitary income, defendants have required plaintiff to provide information relating to the activities of plaintiff's foreign subsidiaries, a requirement which has burdened plaintiff financially. According to the complaint, imposition of the unitary income tax burdens not only Alcancorp, but plaintiff and its foreign subsidiaries as well.

In 1981 plaintiff sued the Board and certain agents of the Board based upon the unitary income tax applied to Alcancorp, in the United States District Court for the Southern District of New York. In that action the court held that plaintiff, as a parent corporation, lacked standing to contest the taxation of Alcancorp, its subsidiary, *Alcan Aluminum Ltd. v. Franchise Tax Board of the State of California*, 558 F. Supp. 624 (S.D. N.Y. 1983) (*Alcan I*). The Second Circuit affirmed the decision, *Alcan Aluminum Ltd. v. Franchise Tax Board of the State of California*, No. 83-7236 (2d Cir. June 17, 1983), and the Supreme Court denied certiorari, 104 S. Ct. 1457 (1984). Defendants argue that the result in *Alcan I* precludes plaintiff from relitigating the standing issue.

The Supreme Court has held that a judgment holding a particular tax assessment invalid does not collaterally estop collection of the same tax in a later year when there

has been intervening authority which supersedes or repudiates the original decision. *Limbach v. Hooven & Allison Co.*, 104 S. Ct. 1837 (1984); *Commissioner v. Sunnen*, 333 U.S. 591 (1954). Similarly, collateral estoppel should not bar an action challenging imposition of a tax when there is superseding law.

Since *Alcan I*, the court of appeals for this circuit has indicated that a parent corporation has standing to challenge imposition of unitary business income tax on its subsidiary when the parent alleges that the tax burdens its foreign commerce:

[Parent] has alleged an independent injury as a basis for standing. It claims an unconstitutional burden on its foreign commerce. If [parent's] allegations as to its standing are accepted as true its interests and those of [subsidiary] are not identical. . . . Thus, [subsidiary's] state remedy does not protect appellant fully. As soon as the tax is assessed against [subsidiary], the threat of injury to appellant will be immediate. Nothing in the Tax Injunction Act requires [parent] to wait while [subsidiary] pursues its own remedies under Oregon law for its own injury.

Alcan Aluminium Limited v. Department of Revenue of the State of Oregon, 724 F. 2d 1294, 1299 (7th Cir. 1983). The court of appeals affirmed the dismissal of the action, however, because the tax had not yet been assessed, and, therefore, the case was not ripe.

To apply collateral estoppel as a bar to this action would mean that companies similarly situated to plaintiff could challenge this tax in this circuit, but that plaintiff could not. Collateral estoppel should not be applied to result in such inequality. Further, there is some authority that collateral estoppel should not be applied in a circuit

which has adopted a contrary rule of law. *United States v. Stauffer Chemical Co.*, 104 S. Ct. 575, 582 (1984) (White, J., concurring opinion).

The Seventh Circuit has recognized that if plaintiff's allegations are true, plaintiff suffers an independent injury from the unitary business tax, and therefore, has standing to contest the constitutionality of the tax. Accordingly, collateral estoppel does not bar this action.

Finally, defendants argue that we should abstain from hearing this action while AlcanCorp pursues a refund action in the California courts. Such an action is now pending in the Los Angeles County Superior Court. Defendants assert that the factual determinations made by the California court as to whether plaintiff and AlcanCorp are a unitary business may obviate the need to decide the constitutional issues presented in this action. Plaintiff, however, is not a party to the California action. Because plaintiff is not directly taxed, it has no state remedy to exhaust to gain relief from the tax. The state refund action does not fully protect plaintiff's interests. Plaintiff's only remedy is to contest the constitutionality of the tax. Consequently, abstention to an action in which plaintiff is not a party is inappropriate.

Defendant's motion to dismiss is denied. Defendant to answer the complaint within twenty days of the entry of this order.

ENTER:

/s/ Prentice H. Marshall
Prentice H. Marshall
District Judge

DATED: January 10, 1985.

January 29, 1985

(916) 324-5154

United States District Court
Northern District of Illinois
Eastern Division
219 South Dearborn Street
Chicago, IL 60604

Attention: Clerk for Hon. Prentice Marshall

Dear Madam:

Imperial Chemical Industries PLC v.
The Franchise Tax Board of the State
of California - No. 84-C8906

Please take off calendar the defendants' motion to dis-
miss in the above matter, which was consolidated with
Alcan Aluminium Limited v. Franchise Tax Board, et al., No.
84-C-6932.

Thank you for your attention to this request.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

CHARLES C. KOBAYASHI
Deputy Attorney General

CCK:rm

cc: James M. Carter, Esq.
John B. Lowry, Esq.
Sidley & Austin

JOHN K. VAN DE KAMP, Attorney General
of the State of California
EDWARD P. HOLLINGSHEAD
Deputy Attorney General
CHARLES C. KOBAYASHI
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1515 K Street, Suite 511
Sacramento, California 95814
Telephone: (916) 324-5154

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALCAN ALUMINIUM	) Civ 84 C 6932
LIMITED,)
	) (Judge Marshall)
Plaintiff,)
)
v.)
THE FRANCHISE TAX	) ANSWER TO
BOARD OF THE THE	) COMPLAINT
STATE OF CALIFORNIA,)
operating through its Chi-)
cago Office; LEONARD)
WILSON, individually and)
as District Manager, Chi-)
cago Office of the FRAN-)
CHISE TAX BOARD OF)
THE STATE OF CALIFOR-)
NIA; and B.M. RARANG,)
individually and as Audi-)
tor, Chicago Office of the)
FRANCHISE TAX BOARD)
OF THE STATE OF)
CALIFORNIA,)
)
Defendants.)

Defendants answer plaintiff's complaint as follows:

1. Defendants are without knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3 and 4.

2. Defendants deny generally and specifically the allegations in the last sentence of paragraph 11.

3. Defendants deny generally and specifically the allegations of paragraph 13 except that they admit that the Franchise Tax Board has assessed taxes against Alcan-corp on a worldwide unitary basis.

4. Defendants deny the allegations of paragraph 12 except that they admit that an audit of Alcan-corp is presently in progress at some stage.

5. Defendants deny generally and specifically the allegations in paragraphs 14, 15, 17, 18, 19, 20, 22 and 23.

6. Defendants are without knowledge of information to form a belief as to the truth of the allegations contained in paragraph 16 except that they deny generally and specifically the allegations in the last sentence of said paragraph 16.

7. Defendants reallege their answers to paragraphs 1 through 20 of the complaint and incorporate them by reference as if set forth in full in answer to paragraph 21.

AFFIRMATIVE DEFENSES

The complaint fails to state a claim upon which relief can be granted in that:

8. Plaintiff has no standing under article III of the United States Constitution to institute this action.

9. The Eleventh Amendment of the United States Constitution bars this action.

10. No injunction or declaratory judgment may be granted which prevents or enjoins the assessment or collection of state taxes.

11. The amount in controversy does not exceed \$10,000.00.

12. The doctrine of abstention bars this action.

13. The doctrines of res judicata or collateral estoppel bar plaintiff from relitigating the same issues resolved in the Second Circuit.

14. This Court has no jurisdiction over the subject matter of this action.

WHEREFORE, defendants pray that plaintiff take nothing by its complaint and that they be awarded their costs of suit and such other and further relief as the court deems proper.

DATED: January 29, 1985.

JOHN K. VAN DE KAMP, Attorney
General of the State of California
EDWARD P. HOLLINGSHEAD
Deputy Attorney General

/s/ Charles C. Kobayashi
CHARLES C. KOBAYASHI
Deputy Attorney General

Attorneys for Defendants

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Telephone: (916) 324-5154
Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL	)	No. Civ 84 C 6932
INDUSTRIES,	)	(Formerly 84 C
	)	8906)
Plaintiff,)	
)	
v.	)	(Judge Marshall)
)	
FRANCHISE TAX BOARD)	
OF THE STATE OF CALI-)	
FORNIA, operating	)	ANSWER TO
through its Chicago Office;	)	COMPLAINT
and LEONARD WILSON,)	
individually and as District)	
Manager, Chicago Office of)	
the State of California.)	
)	
Defendants.)	

Defendants answer plaintiff's complaint as follows:

1. Defendants are without knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4 and 5.

2. Defendants deny generally and specifically the allegations in the next to the last sentence of paragraph 7.

3. Defendants deny generally and specifically the allegations of paragraph 8 except that they admit that the Franchise Tax Board has assessed taxes against Americas on a worldwide unitary basis.

4. Defendants are without knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 except that they deny generally and specifically the allegations in the last two sentences of said paragraph 9.

5. Defendants are without knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10 except that they deny generally and specifically the allegations in the last sentence of said paragraph 10.

6. Defendants deny generally and specifically the allegations in paragraphs 11, 12, 13, 16 and 17.

7. Defendants reallege their answer to paragraphs 1 through 14 of the complaint and incorporate them by reference as if set forth in full in answer to paragraph 15.

AFFIRMATIVE DEFENSES

The complaint fails to state a claim upon which relief can be granted in that:

8. Plaintiff has no standing under article III of the United States Constitution to institute this action.

9. The Eleventh Amendment to the United States Constitution bars this action.

10. No injunction or declaratory judgment may be granted which prevents or enjoins the assessment or collection of state taxes.

11. The amount in controversy does not exceed \$10,000.00.

12. The doctrine of abstention bars this action.

13. This Court has no jurisdiction over the subject matter of this action.

WHEREFORE, defendants pray that plaintiff take nothing by its complaint and they be awarded their costs of suit and such other and further relief as the court deems proper.

DATED: February 13, 1985.

JOHN K. VAN DE KAMP, Attorney
General of the State of California
EDWARD P. HOLLINGSHEAD
Deputy Attorney General

CHARLES C. KOBAYASHI
Deputy Attorney General
Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL	)	No. 84-C-8906
INDUSTRIES PLC	)	(Judge Williams)
)	
Plaintiff,)	
	)	JOINT STIPULATION
v.	)	OF FACTS
)	
THE FRANCHISE TAX)	
BOARD OF THE STATE OF)	
CALIFORNIA, operating)	
through its Chicago office;)	
and LEONARD WILSON,)	
individually and as District)	
Manager, Chicago Office of)	
the State of California)	

IT IS STIPULATED AND AGREED by the parties through their respective counsel that:

This stipulation shall not be construed as a concession by any party of relevance and materiality of any of the facts herein recited, and the parties expressly reserve the right to argue the relevancy or materiality of any of the facts herein recited.

Exhibits attached are included by reference and may be entered into evidence as facts except as expressly provided herein.

This stipulation shall apply only in the above-entitled action and in any appeal from the judgment of this Court.

The following facts are agreed and undisputed and may be treated by the Court as facts proven in open court.

1. Plaintiff Imperial Chemical Industries PLC ("ICI") is an English public limited company having its principal office and place of business in London, England. ICI does not maintain a place of business in the United States or any of its Possessions or Territories. ICI does have an office in New York, which office is used by company officials when in the United States on business. ICI does not do business in California and is not subject to the California Bank and Corporation Tax Law.

2. ICI is a publicly held company listed on the London Stock Exchange, having approximately 350,000 shareholders owning 619 million ordinary shares (common stock) with an equity value of some 3,800 million pounds sterling. ICI's 1984 Financial Statement is attached as Exhibit 1. ICI ordinary shares are also traded on the New York Stock Exchange in the form of American Depositary Receipts, each Receipt representing two ordinary shares on the London Stock Exchange. Attached as Exhibit 2-1 and 2-2 are copies of ICI's Forms 20-F which were filed, as required, with the U.S. Securities and Exchange Commission for years ended December 31, 1983 and 1984. Forms 20-F have been filed for previous years by ICI.

3. The business activities of ICI and its subsidiaries in Western Europe comprise thirteen principal business groupings. The main product lines of each are:

<i>Business</i>	<i>Main Product Lines</i>
Agricultural	Fertilizers, ammonia, methanol
Agrochemicals and Colours	Herbicides; pesticides; dyes; pigments

Fibres	Synthetic fibres
General Chemicals	General and heavy chemicals; alkalis; chlorine, fluorine, and derivatives; soda ash
Industrial Explosives	Industries explosives and accessories
Oil	Crude oil and gas
Organics	Dyes, nitrocellulose, silicone, biocides, polyurethanes
Paint	Paints and industrial coatings
Petrochemicals and Plastics	Petroleum derivatives; basic materials for plastics: ethylene, propylene, butadiene; polymers, acrylics
Pharmaceuticals	Drug and Pharmaceuticals for human and animal use
Polyurethanes	Polyurethanes
Plant Protection	Herbicides, pesticides, biocides
Speciality Chemicals and Materials	Silicones; biocides; surfactants; resins; composite materials

The Agrochemicals, Pharmaceuticals, and Oil businesses operate on a worldwide basis.

4. ICI owns, directly or indirectly, 50% or more of the following principal manufacturing subsidiaries in nations foreign to the United Kingdom:

<i>Nation</i>	<i>Company</i>
Canada	C-I-L Inc.
Argentina	Duperial S.A.I.C.
United States	ICI Americas Inc.
Malaysia	Chemical Company of Malaysia Berhad
Australia	ICI Australia Ltd. Incitec Ltd.
Japan	ICI Japan Ltd. ICI-Pharma Ltd.
New Zealand	ICI New Zealand Ltd.
Pakistan	ICI Pakistan Manufacturers Ltd.
India	Indian Explosives Ltd.

A list of principal "subsidiaries" (over 50% ownership) and "associated companies" (between 20% and 50% ownership) as of December 31, 1984, showing nation in which organized and products manufactured or supplied is attached as Exhibit 3. This is not complete as there are about 400 subsidiaries and about 100 associated companies. Hereinafter, ICI and its worldwide subsidiaries (over 50% ownership) will be referred to as the "ICI Group."

5. In 1984, the ICI Group reported gross sales worldwide, eliminating intercompany trading, of 9,909 million pounds sterling. Of this amount, 6,774 million pounds sterling was derived from sales in nations other than the United Kingdom. In 1984 gross sales in the United States by ICI Americas Inc. ("ICI Am") and subsidiaries were approximately U.S. \$1,400 million (1,208

million pounds sterling). ICI Am is the principal operating subsidiary of ICI in the United States. ICI Am makes export sales out of the United States. Attached as Exhibit 4 is an affidavit by the Controller of ICI, B.D. Romeril, showing the distribution of sales, property, and payroll for the ICI worldwide group of Companies compared to the United States sales, property, and payroll for the years 1981 through 1984. By this stipulation, the Defendant does not endorse the examples in paragraph 8 of Mr. Romeril's affidavit relating to translating foreign currencies into sterling equivalents and sterling into dollar equivalents. All of ICI Am's income is taxable for federal income tax purposes and is classified as U.S. source income under the Internal Revenue Code.

6. ICI Am (formerly ICI United States, Inc. and Atlas Chemical Industries), the entity subject to California taxation, is a Delaware corporation. During the period 1971 through 1981, ICI Am conducted business in California through ownership* and operation of a pharmaceutical manufacturing plant in Pasadena and other business activities. ICI Am was at all relevant times a subsidiary of ICI American Holdings Inc., a wholly owned subsidiary of ICI. ICI American Holdings Inc. is a Delaware corporation that does not and never did conduct any business in California. The sole activity of ICI American Holdings Inc. was holding stock in subsidiary corporations and exercising certain stewardship functions of ownership.

* The plant and property were actually owned by ACI Realty Corporation, a Delaware Corporation, wholly owned by ICI Am.

7. In July 1971, the stock of Atlas Chemical Industries, Inc., a Delaware corporation, was acquired by ICI Am. Atlas was liquidated on September 30, 1971. At that time, ICI Am became the parent of a number of Atlas foreign subsidiaries, the principal ones of which were:

<i>Name</i>	<i>Nationality</i>
Atlas Europol S.A.	Italy
Atlas Chemical Industries, S.A.	Belgium
Atlas Taiwan Ltd.	Taiwan
Atlas Honeywell Ltd.	England
Atlas Canada Limited	Canada
Atlas Quimicas Industries, S.A.	Nicaragua
Atlas Mexico, S.A.	Mexico
Atlas Chemie G.m.B.H.	West Germany

By September 30, 1975, all of those subsidiaries had been liquidated or sold by ICI Am to ICI or third parties. For purposes of this litigation, no issue is raised as to the correctness of including these subsidiaries in the combined report used to calculate ICI Am's income attributable to California. ICI Am has not had foreign subsidiaries or foreign operations since 1975 except for a limited amount of export sales to foreign countries.

8. ICI Am conducts the following activities in California at the present time (1985):

Stuart Pharmaceutical Plant, 378 employees.

Signal Hill Research Facility, 5 employees.

Visalia Agricultural Research Facility,

11 employees.

ARBCO Electronic Plant, 112 employees.

LNP Corp., 71 employees.

The ARBCO plant was acquired in 1983. LNP Corp. was acquired March 31, 1984. The Stuart (Pasadena) facility has been operated by ICI Am since September 1, 1971, the date ICI Am acquired the stock and properties of Atlas Chemical Industries, Inc.

9. Defendant, The Franchise Tax Board of the State of California ("Board"), is an official agency of the state. The Board's responsibilities include administration, collection and enforcement of the state's corporate income and franchise taxes. The Board's agents conduct taxpayer audits and make redeterminations of taxes based on taxpayer returns and accounting information, taxpayer records, and other informational sources. The Board maintains offices in Chicago, Illinois, as well as in several other cities. The Board's audit of ICI Am was conducted through its offices in New York City and San Diego, California. No audit of ICI Am has been conducted by the Board through its Chicago office.

10. For the income years ending 1972 through 1981, ICI Am filed with the Board California franchise tax returns. For those years in which ICI Am reported net income it apportioned income to California on the basis of a three-factor formula, using California property, California payroll and California sales as the numerators and all property, payroll and sales of ICI Am as the denominators. For those years in which ICI Am reported a loss it filed a return reflecting such loss but provided no information on its apportionment factors.

11. During the income years ended September 30, 1972 through December 31, 1981, ICI Am's California property, payroll, and sales, as defined for purposes of the California apportionment formula (Cal. Rev. & Tax. Code Section 25120 et seq.), assignable to California and reported on the California return or derived from ICI Am's books and records, were for each year as follows (expressed in dollars):

	<i>Property</i>	<i>Payroll</i>	<i>Sales</i>
Sept. 30, 1972	10,512,000	4,739,000	12,961,000
Sept. 30, 1973	10,649,000	3,351,000	15,312,000
Sept. 30, 1974	11,438,000	3,616,000	18,431,000
Sept. 30, 1975	13,304,000	4,259,000	19,734,000
Dec. 31, 1975	12,396,000	1,194,000	5,960,000
Dec. 31, 1976	12,407,274	5,179,530	29,378,661
Dec. 31, 1977	13,454,102	5,947,292	34,217,864
Dec. 31, 1978	15,291,997	6,564,559	51,351,332
Dec. 31, 1979	21,165,773	7,486,820	58,670,968
Dec. 31, 1980	23,592,346	7,878,572	70,022,943
Dec. 31, 1981	23,229,096	8,885,877	71,238,012

12. ICI Am's reported calculation of taxes paid to the Board, net of credits, for the years 1972 through 1981 was as follows (expressed in dollars):

<i>Income Year Ending</i>	<i>ICI Am Total Bus. Inc.</i>	<i>Cal. Apport. Factor (%)</i>	<i>Cal. Bus. Income</i>	<i>Tax Rate</i>	<i>Tax</i>
Sept. 30, 1972	(6,819,633)	-	-	min.	100
Sept. 30, 1973	(27,434,974)	-	-	min.	200
Sept. 30, 1974	19,540,882	3.9248	699,722	9.0	62,975
Sept. 30, 1975	10,974,668	4.4176	484,455	9.0	43,600
Dec. 31, 1975	(2,038,420)	5.1430	-	min.	200
Dec. 31, 1976	17,393,771	5.2894	920,010	9.0	82,801
Dec. 31, 1977	25,926,761	5.0830	1,315,564	9.0	118,401
Dec. 31, 1978	41,416,104	5.2357	2,166,422	9.0	194,978
Dec. 31, 1979	2,795,678	5.0342	147,640	9.0	13,287
Dec. 31, 1980	6,021,966	5.1912	311,757	9.0	28,058
Dec. 31, 1981	17,475,583	4.9449	869,057	9.6	83,429

13. For the income years ending 1972 through 1981, the Board has conducted audits of the California franchise tax returns of ICI Am. Upon audit the Board determined that ICI Am was part of a unitary enterprise conducted by all members of the ICI Group.

14. Based upon its determination that ICI Am was part of a worldwide unitary business conducted by the ICI Group, the Board computed ICI Am's net income subject to California tax by applying the unitary apportionment method of accounting, using as the apportionment base the worldwide income of the ICI Group.

15. The unitary apportionment method of accounting as used by the Board is a method of determining the amount of income of a particular taxpayer which is attributable to and taxable by California. Under this method, the results and activities of all commonly controlled entities which function as a single or unitary business are combined and a portion of such overall results is then assigned to California based upon a comparison of the activities conducted in California to the activities of the unitary business everywhere. This method involves essentially a three-step process, as follows:

(a) The first step in the process is to identify those corporate entities and activities which constitute a single unitary business.

(b) The second step is to determine the total income of the unitary business. This entails the elimination of all nonbusiness income of the unitary entities. Nonbusiness income is income which does not arise from the conduct of the unitary business (e.g., certain investment income).

(c) The third step is to apply an apportionment formula to the total business income of the unitary business. The apportionment formula is the average ratio of the activities of the individual taxpayer in California to the activities of the entire unitary business everywhere.

16. In apportioning a part of the total combined business income of the ICI Group to the activities conducted by ICI Am in California, the Board followed the provisions of the Uniform Division of Income for Tax Purposes Act ("UDITPA") as enacted by California.

17. The manner in which the individual apportionment fractions are computed is set forth in Regulations adopted by the Board (California Administrative Code, title 18, Sections 25129-25137). A copy of the current version of these administrative regulations, which are identical to those recommended by the Multi-state Tax Commission, is attached hereto as Exhibit 5.

18. The Board has also adopted a regulation (California Administrative Code, title 18, Reg. § 25137-6) which sets forth rules for the preparation of a combined report which includes foreign country operations. (A copy of the regulation is attached hereto as Exhibit 6.)

19. The Board's calculation of ICI Am's California tax liabilities, disregarding a credit not here at issue, for the years 1971 through 1981, was as follows:

	Business Income of Unitary Bus. in U.S. Dollars*	Cal. Apport. Factor %	Cal. Bus. Income (\$)	Tax Rate	Tax (\$)
Sept. 30, 1972	300,945,155	.3254%	979,276	7.45%	72,956
Sept. 30, 1973	559,403,136	.2540%	1,420,884	7.95%	112,960
Sept. 30, 1974	892,835,033	.2335%	2,084,770	9.0%	187,629
Sept. 30, 1975	751,667,365	.2825%	2,123,460	9.0%	191,111
Dec. 31, 1975	168,943,576	.2763%	466,791	9.0%	42,011
Dec. 31, 1976	892,094,114	.2922%	2,606,699	9.0%	234,603
Dec. 31, 1977	853,140,345	.3128%	2,668,623	9.0%	240,176
Dec. 31, 1978	878,282,236	.3738%	3,283,019	9.0%	295,472
Dec. 31, 1979	1,255,194,918	.3463%	4,346,740	9.0%	391,206
Dec. 31, 1980	604,695,081	.3273%	1,979,167	9.6%	190,000
Dec. 31, 1981	265,511,942	.3475%	922,654	9.6%	88,575

* For convenience of the court, this table reflects worldwide income in U.S. dollars. However, as noted in the text, the actual computations were done in pounds sterling, with the amount of income apportioned to California computed in pounds sterling, which was then converted to U.S. dollars for purposes of computing the California tax, using average exchange rates for the year as published by the International Monetary Fund.

After the issuance by the Board of the Notices of Proposed Assessment and the filing by ICI Am of a protest, the Board agreed to reduce the above amounts for the years of 1976-1981, which erroneously included investment grants in income, to the following amounts:

Business Income of Unitary Bus. in U.S. Dollars*	Cal. Apport. Factor %	Cal. Bus. Income (\$)	Tax Rate	Tax (\$)
Dec. 31, 1976	.2922%	2,490,548	9.0%	224,152
Dec. 31, 1977	.3128%	2,548,505	9.0%	229,365
Dec. 31, 1978	.3738%	3,117,992	9.0%	280,619
Dec. 31, 1979	.3463%	4,207,145	9.0%	378,643
Dec. 31, 1980	.3273%	1,819,272	9.6%	174,650
Dec. 31, 1981	.3475%	511,343	9.6%	49,088

* See footnote on preceding page.

20. The changes in ICI Am's California tax liability are largely the result of the determination by the Board that ICI Am was part of a unitary enterprise conducted by the ICI Group and that use of the unitary apportionment method of accounting was required to determine properly ICI Am's California taxable income.** These adjustments generally resulted in an increase in California tax, but resulted in a reduction for 1981.

21. In computing the income attributable to ICI Am's California activities, the Board began with the consolidated income of the ICI Group as set forth in the financial statements contained in ICI's published annual reports and expressed in pounds sterling. Adjustments based on information contained in the published annual reports were made to eliminate exchange rate gains and losses, investment grants and the earnings of 50 percent or less owned corporations. Adjustments were made to the earnings of ICI Am to conform to California tax accounting. Nonbusiness income was eliminated (for 1976-1980, dividends from 50% or less owned subsidiaries were included as business income). Depreciation was reported by ICI Am on a straight-line basis for tax and book purposes and by the ICI Group on a straight-line basis for the financial statements contained in the annual reports.

22. The numerators of the factor fractions of the apportionment formula were supplied by ICI Am, with

** Adjustments were also made, which are not in issue in this action, to increase the California sales over the amounts reported by ICI Am. These adjustments gave rise to increased California tax liabilities.

adjustments made to properly reflect sales assigned to California. These amounts were converted to pounds sterling, using average exchange rates for the year as published by the International Monetary Fund.

23. The denominators of the factor fractions of the apportionment formula were all derived from the published financial statements of the ICI Group in ICI's annual reports, expressed in pounds sterling, using average exchange rates for the year as published by the International Monetary Fund. Fixed assets (land, plant and equipment) are set forth on a consolidated basis in the annual reports, either at original cost or on a revalued basis. If assets are revalued, any changes are reflected in a revaluation reserve which is set forth in the ICI Group's consolidated financial statements. The inventory of the ICI Group is set forth in the annual reports. Because ICI Group rents were not available to be included in the denominator of the property factor, the Board eliminated rentals from the numerator and denominator of the property factor. ICI Group payroll and sales were taken directly from the published annual reports.

24. The California apportionment factor was calculated by averaging the three-factor fractions. The numerator and denominator of each of the fractions was expressed in pounds sterling. The apportionment factor was then applied to the worldwide business income of the ICI Group (as derived from the annual reports of ICI and expressed in pounds sterling). The result, business income apportioned to California, was translated into dollars at the average exchange rates for the year as published by the International Monetary Fund and the California tax was then calculated.

25. Attached hereto as Exhibits 7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7 and 7-8 are copies of the annual reports of ICI for the years 1974 through 1981.

26. Attached as exhibits are copies of correspondence between the Board and ICI Am relating to the audits, as follows:

<i>Date</i>	<i>Document</i>	<i>Ex. No.</i>
July 29, 1977	Questionnaire from Board	8
February 2, 1979	Letter from Board	9
February 27, 1979	Letter from ICI Am	10
March 5, 1984	Letter from Board	11
November 15, 1984	Letter from Board	12

27. The Board has not directed any correspondence to ICI or any member of the ICI Group other than ICI Am. All taxes assessed or proposed to be assessed by the Board were against ICI Am. The Board has not assessed or proposed to assess taxes against ICI or any member of the ICI Group other than ICI Am.

28. ICI Am has not petitioned the Board for the use of a different apportionment method under California Revenue and Taxation Code § 25137.

29. ICI Am paid the additional assessments for 1972-1975, and timely filed claims for refund with the Board protesting the calculation of ICI Am's California tax on the basis that it is part of a unitary business conducted by the ICI Group. A copy of ICI Am's statement of the grounds for refund is attached as Exhibit 13. ICI Am also has filed a protest of the proposed assessment, calculated on the same basis, for the years 1976

through 1981. ICI Am believes increased assessments for 1982, 1983 and 1984 are likely to be proposed by the Board on the same basis as earlier years.

30. For purposes of this litigation, plaintiff does not contest:

(a) the factual basis for the Board's determination that the ICI Group constituted a single unitary business under the laws of California and the tests formulated by the California courts;

(b) the factual correctness of the Board's application of the unitary method of accounting and combination of the income and apportionment factors of the ICI Group under the laws of California and the tests formulated by the California courts.

31. ICI collects and maintains data on the property, payroll, and sales of its subsidiaries in a summary form only. Detailed supporting data is maintained at the subsidiary level. Summary data is collected, aggregated and submitted by the subsidiaries as recorded on annual "T" Forms. Financial results are reported annually to ICI in London by its various worldwide subsidiaries on the "T" Forms, which are balance sheets and profit and loss statements conformed to U.K. accounting standards, with data that are not necessarily stated at calendar year ends, but normally at dates determined by the statutory accounting year of the subsidiary. Copies of the "T" Forms for the year 1980 prepared by ICI Am are attached as Exhibit 14-1 and 14-2. The "T Form" is the basic financial report submitted regularly to ICI by its worldwide subsidiaries.

32. There are differences in accounting principles and reporting practices among the United States and the various nations, including the United Kingdom, in which ICI operates through its subsidiaries worldwide. All subsidiaries of ICI submit necessary data for the preparation of yearly consolidated financial statements which conform to United Kingdom accounting practice. Attached as Exhibit 15 is a copy of the "International Survey of Accounting Principles and Reporting Practices" prepared by Price Waterhouse International (Scarborough, Ont. 1979).

33. Under date of August 31, 1984, the Secretary of the Treasury (United States) issued the Final Report of the "Worldwide Unitary Taxation Working Group." A copy of this report is attached as Exhibit 16. By this stipulation, the parties intend no endorsement of the views stated in Exhibit 16.

34. Attached as Exhibit 17-1 through 17-14 are statements from various foreign governments to the United States government expressing the views of these governments on unitary taxation by the states of the United States. By this stipulation, the parties intend no endorsement of the views stated in Exhibit 17. These statements are as follows:

17-1: Letter from Nigel Lawson, Chancellor of Exchequer, United Kingdom, to Secretary of Treasury dated July 12, 1983;

17-2: Note No. 51 from the British Embassy to the Department of State; Washington, D.C., dated March 25, 1980;

17-3: Note from the Embassy of Belgium to the Department of State dated January 25, 1984, attaching

memorandum of the Government of Belgium on Worldwide Unitary Taxation;

17-4: Aide-Memoire from the Japanese Government to the U.S. Government regarding unitary taxation dated June 6, 1984;

17-5: Note No. 634 from the Embassy of Canada to the Department of State, Washington, D.C., dated February 27, 1984;

17-6: Letter forwarding note from the Embassy of the Federal Republic of Germany to the Department of State, Washington, D.C., dated November 28, 1983;

17-7: Note from Embassies of the Member States of the European Community, the European Commission and the Embassies of Australia, Canada, Japan and Switzerland with appended signatures of the respective ambassadors to the Department of State, Washington, D.C., dated January 25, 1984;

17-8: Note EA-14533 from the Royal Netherlands Embassy to the Department of State, Washington, D.C., dated December 21, 1983;

17-9: Letter with note attached from the Belgian Embassy to the Department of State, Washington, D.C., dated June 29, 1982;

17-10: Note No. 283 from the Canadian Embassy to the Department of State, Washington, D.C., dated June 14, 1982;

17-11: Note No. 83 from the British Embassy to the Department of State, Washington, D.C., dated May 18, 1982;

17-12: Note No. 692 from the Canadian Embassy to the Department of State, Washington, D.C., dated December 22, 1981;

17-13: Note No. 211 from the British Embassy to the Department of State, Washington, D.C., dated October 30, 1981; and

17-14: Note No. 383/83 from the Embassy of Australia to the Department of State, Washington, D.C., dated November 7, 1983.

35. Attached as Exhibit 18 is a copy of the United Kingdom legislation and accompanying Parliamentary statements reflecting the passage of new Clause 27 to the Finance Bill of 1985. This legislation authorizes the United Kingdom Treasury to impose retaliatory measures on United States' companies doing business in unitary tax states. The United Kingdom Treasury has not at this date instituted any of the measures authorized.

36. A corporation of the United Kingdom is entitled under the laws of that country to a credit for foreign taxes paid on dividends of subsidiaries located in other countries and for foreign taxes paid on earnings out of which such dividends are paid. In some cases this credit extends to taxes levied by subnational jurisdictions such as California.

37. There is attached as Exhibit 19 an affidavit from the Inland Revenue, a branch of the Treasurer's office of the Government of the United Kingdom, showing the amount of tax credit allowable under English law to ICI for the California taxes assessed against ICI Am shown in Paragraph 19. By this stipulation, the Board does not accept the correctness of the characterization of the sources of income used for the California unitary method of taxation. By this stipulation, the parties intend no endorsement of the views stated in Exhibit 19. No California tax has been assessed directly against ICI.

38. There is attached as Exhibit 20 a table of monthly conversion rates to U.S. dollars from English

pounds, for the interval December 31, 1979 through August 30, 1985.

39. There is attached as Exhibit 21 a spread sheet showing a comparison of ICI and ICI Am book profits for the years 1972-1984.

40. ICI estimates that the additional administrative cost of preparing ICI Am's California franchise tax returns on a world-wide unitary basis would be two million pounds sterling initially, plus two million pounds sterling on an annual basis. Attached as Exhibit 22 is an affidavit by the Deputy Controller of ICI, Frederick Philip Gray, showing prospective reporting requirements and accounting adjustments and showing also the estimated cost of each such requirement or adjustment. The estimated costs have not been incurred to date.

This Stipulation is made this 26th day of November, 1985.

John B. Lowry
McCutchen, Doyle, Brown &
Enersen

By /s/ John B. Lowry
Counsel for Plaintiff

John K. Van de Kamp,
Attorney General of the State
of California

Edward P. Hollingshead,
Supervising Deputy Attorney
General

By /s/ Derry L. Knight
Derry L. Knight, Deputy
Attorney General
Counsel for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL	)	No. 84-Co-8906
INDUSTRIES PLC	)	(Judge Williams)
)	
Plaintiff,)	
	)	SUPPLEMENTAL JOINT
v.	)	STIPULATION OF
	)	FACTS
THE FRANCHISE TAX)	
BOARD OF THE STATE OF)	
CALIFORNIA; operating)	
through its Chicago office;)	
and LEONARD WILSON,)	
individually and as District)	
Manager, Chicago Office of)	
the State of California)	

WHEREAS, subsequent to the filing of a Joint Stipulation on December 2, 1985, certain facts have occurred which the parties wish to make the subject of this Supplemental Joint Stipulation of Facts.

IT IS ACCORDINGLY STIPULATED AND AGREED by the parties through their respective counsel that:

This stipulation shall not be construed as a concession by any party of relevance and materiality of any of the facts herein recited, and the parties expressly reserve the right to argue the relevancy or materiality of any of the facts herein recited.

Exhibits attached are included by reference and may be entered into evidence as facts except as expressly provided herein.

This stipulation shall apply only in the above-entitled action and in any appeal from the judgment of this Court.

The following facts are agreed and undisputed and may be treated by the Court as facts proven in open court.

1. On November 8, 1985 the President of the United States issued a "Statement By the President" addressing the worldwide unitary method of taxation, a copy of which is attached as Exhibit 23.

2. On December 18, 1985, S. 1974 was introduced in the United States Senate by Senator Pete Wilson. The text is included in the attached Exhibit 24. At the same time a parallel bill, H. R. 3980 was introduced in the House of Representatives.

3. The text of a statement by Senator Wilson in introducing S. 1974 is included in the attached Exhibit 24.

4. A copy of a letter dated December 18, 1985, from the Secretary of the Treasury to the President of the Senate transmitting S.B. 1974 is attached as Exhibit 25. At the same time a parallel letter was sent to the Speaker of The House of Representatives.

5. The text of a statement by Congressman John J. Duncan in introducing H.R. 3980 is included in the attached Exhibit 26.

This Supplemental Joint Stipulation is made this 28th day of January, 1986.

John B. Lowry
McCutchen, Doyle, Brown &
Enersen

By /s/ John B. Lowry
Counsel for Plaintiff

John K. Van de Kamp,
Attorney General of the State
of California

Edward P. Hollingshead,
Supervising Deputy Attorney
General

By /s/ Derry L. Knight
Derry L. Knight,
Deputy Attorney General
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALCAN ALUMINIUM	)	No. 84 C 6932
LIMITED,)	
Plaintiff,	)	STIPULATION OF FACTS,
	)	AS REVISED
v.)	
THE FRANCHISE TAX)	
BOARD OF THE STATE)	
OF CALIFORNIA, operat-)	
ing through its Chicago)	
office; Leonard Wilson,)	
individually, and as Dis-)	
trict Manager, Chicago)	
Office of the Franchise Tax)	
Board of the State of Cali-)	
fornia; and B. M. Rarang,)	
individually, and as Audi-)	
tor, Chicago Office of the)	
Franchise Tax Board of the)	
State of California,)	
Defendants.)	

IT IS STIPULATED AND AGREED by the parties through their respective counsel that:

This stipulation is expressly subject to the right of each party to introduce additional evidence by way of judicial notice.

This stipulation shall not be construed as a concession by any party of the relevance or materiality of any of the facts herein recited, and the parties expressly reserve the right to argue the relevancy or materiality of any of the facts herein recited.

Exhibits attached are included by reference and may be entered into evidence as facts except as expressly provided herein.

This stipulation shall apply only in the above-entitled action and any appeal from the judgment of this Court.

ISSUES

For the purposes of this litigation the parties hereby stipulate that the only legal issues before this Court are whether plaintiff may properly maintain this action and whether or not the Board's application of the unitary method of accounting under Section 25101 et seq. of the California Revenue and Taxation Code, and implementing regulations, as applied to the facts in this case violated the Foreign Commerce Clause of the United States Constitution. For purposes of this litigation, Alcan is not contesting the Board's determination that the Alcan Group Companies constitute a single unitary business under the tests formulated by the California Courts and the United States Supreme Court, or that the tax assessed violated the Due Process Clauses of the United States Constitution or the California Constitution.

FACTS

The following facts are agreed and undisputed and may be treated by the Court as facts proven in open Court:

1. For purposes of this litigation the parties have selected the income years 1971, 1977 and 1978 as being generally representative of all years and have included

data for such years in the body of the stipulation. Comparable data has been prepared for the years 1965 through 1978 and is set forth in exhibits attached to the stipulation.

2. Alcan Aluminium Limited ("Alcan") is a corporation organized and existing under the laws of Canada. Its headquarters and principal place of business are in Montreal, Quebec.

3. During the relevant period herein, Alcan and its subsidiaries ("Alcan Group Companies") engaged in all phases of the aluminum business on an international scale. The Alcan Group Companies are independent of, and operate in competition with, all other major world aluminum producers. Their operations include the mining and processing of bauxite, an aluminum-bearing ore, the conversion of bauxite into alumina, the generation of electric power for use in smelting aluminum, the smelting of aluminum alloys into semi-finished and finished products (fabrication), the production and sale of chemicals, transportation services for cartage of raw materials, metal and general cargo, and engineering services.

4. During the relevant time period, the Alcan Group Companies had bauxite holdings and smelted primary aluminum in seven countries, produced alumina in six countries, fabricated aluminum in twenty-nine countries, operated sales outlets in over one hundred different countries and maintained warehouse inventories in various international markets. At all times relevant herein, nearly one hundred subsidiaries of Alcan operated wholly outside the United States.

5. In 1971, 1977 and 1978, the Alcan Group Companies had the following sales, assets and employees:

(000's Omitted)			
1971			
	Foreign	U.S.	Total
Sales	\$ 946,816	\$434,555	\$1,381,371
Assets	1,106,741	117,155	1,223,896
Employees	57	4	61
1977			
	Foreign	U.S.	Total
Sales	\$1,989,202	\$887,009	\$2,876,211
Assets	1,327,322	132,728	1,640,050
Employees	57	4	61
1978			
	Foreign	U.S.	Total
Sales	\$2,496,478	\$1,055,872	\$3,552,350
Assets	1,503,114	135,057	1,638,171
Employees	59	4	63

6. At all times relevant herein, neither Alcan nor any of its non-United States subsidiaries had a permanent place of business in the United States.

7. Alcan Aluminum Corporation ("Alcancorp") is a corporation organized and existing under the laws of the State of Ohio. Its principal place of business is in Cleveland, Ohio.

8. At various times since 1965 the Alcan Group Companies have had a number of member companies, in addition to Alcancorp, doing business in the United States. These entities included, but are not limited to,

Alcan Sales, Inc., Alcan Metal Powders, Inc., Alcan Cable Corp., Luxfer USA, Ltd., South Pacific Aluminum and Supplies, Inc., and Hunter Douglas Research Corp. For certain of the years, some of these entities did business in California and filed separate California returns reflecting only their income and activities. The Alcan Group Companies that did business in California, the years of their operation in California, and their formal corporate relationship to AlcanCorp are shown on the charts attached as Exhibit I. The Franchise Tax Board ("Board") upon audit included such entities in the combined report of AlcanCorp. All references to AlcanCorp, hereinafter, include such entities unless otherwise specifically noted.

9. AlcanCorp, at all times relevant, engaged in the business of fabricating and selling in the United States aluminum products consisting of aluminum sheet and coil, plate, metal powders and pigments, electrical power cable, building products, primary ingot and other metal and allied industrial products. AlcanCorp, at all times relevant, has obtained a substantial portion of its metal from Alcan Company of Canada (ACOC), a member of the Alcan Group Companies. AlcanCorp, at all times relevant, has sold roughly 5 percent of its metal products to members of the Alcan Group Companies. Prior to 1985, Alcan had no primary smelter capability within the United States, but did have substantial secondary smelting capability (scrap recycling).

10. AlcanCorp conducts certain of its business operations in the State of California and is duly qualified to do business within the State of California. During the

period 1965 through 1977, AlcanCorp's operations in California consisted primarily of a large manufacturing facility in Riverside, California. The facility was purchased from the Bridgeport Brass Division of National Distiller's and Chemical Corporation in early 1965 and was, according to the seller's books and records, incurring financial losses.

11. During the years 1965 through 1978 AlcanCorp had the amounts of property, payroll and sales in California shown on Exhibit V. For the years 1971, 1977 and 1978 AlcanCorp's California property, payroll and sales were:

	1971	1977	1978
Property	34,396,671	30,564,460	30,023,025
Payroll	8,652,337	7,021,489	7,136,019
Sales	26,919,093	50,890,777	63,978,635

12. The Board is an agency of the State of California. It maintains a permanent office for the transaction of its official business within the Eastern Division of the Northern District of Illinois.

13. Leonard Wilson was formerly District Manager of the Chicago Office of the Board and maintains his regular place of business within the Eastern Division of the Northern District of Illinois.

14. B. M. Rarang is an auditor in the Chicago Office of the Board and maintains his regular place of business within the Eastern Division of the Northern District of Illinois.

15. The Board has the power and duty to administer the Bank and Corporation Tax Law of the State of California, California Government Code section 15700 et seq. and California Revenue and Taxation Code section 23001 et seq., as well as other provisions of the laws of the State of California respecting taxation ("California Tax Law"). Defendants administer the California Tax Law with respect to numerous corporations through their Chicago office.

16. The Chicago Office of the Board has audited and determined the proper level of taxation on Alcan's subsidiary, AlcanCorp, for 1976 through 1978. The Board's agents, Rarang and Wilson, had management and supervisory responsibility for that audit.

17. During the years 1965 through the present (1985), AlcanCorp has filed original and amended returns and claims for refund with the Board which have apportioned the income shown on such returns on the basis of the three factor formula provided for in the California statutes, otherwise referred to as the Uniform Division of Income for Tax Purposes Act. Attached as Exhibit II is a chart showing the manner in which AlcanCorp filed its California return(s), whether the return(s) were filed with a refund claim, and the method by which the Board assessed the tax. Attached as Exhibit III is a chart showing the amount of tax paid by AlcanCorp with respect to each such return. For the years 1965 through 1966 the Board at audit determined that AlcanCorp and Alcan Canada¹ operated as a single unitary business.

¹ Alcan Canada is Aluminum Company of Canada, Limited, the immediate parent of AlcanCorp.

Accordingly, the Board combined the income and activities of AlcanCorp and Alcan Canada to determine the income of AlcanCorp attributable to California and issued notices of proposed assessment. AlcanCorp, while not agreeing with the Board's right to combine the activities of AlcanCorp with Alcan Canada, or Alcan Group Companies, requested that the notices of proposed assessment be modified to include the Alcan Group Companies. Attached as Exhibit IV-1 through IV-8 is the correspondence between AlcanCorp and the Board leading to this modification.

18. AlcanCorp tax returns for 1971, 1977 and 1978 were filed as attached as Exhibit VI-1 through VI-3. AlcanCorp's refund claims which cover the same years are attached as Exhibits VII-1 through VII-3.

19. The Board has audited or is in the process of auditing AlcanCorp's returns for the years 1965 through 1981. Pursuant to these audits and the resultant administrative review process arising from AlcanCorp's protest of the audit adjustments, the Board has determined that AlcanCorp is part of a single unitary business conducted by the Alcan Group Companies. As a result, the Board has calculated AlcanCorp's California tax liability through 1978 on an apportioned share of the total business income of the unitary business conducted by the Alcan Group Companies. The apportionment fraction applied to such total income was calculated by reference to the ratio of AlcanCorp's California property, payroll and sales to all of the property, payroll and sales of the unitary business conducted by the Alcan Group Companies.

20. The Board, in calculating AlcanCorp's California tax liability, applied the unitary method of accounting as required by Section 25101 et seq., California Revenue and Taxation Code. Attached hereto as Exhibits VIII, IX, and X-1 through X-2, respectively, are copies of the statutes, the current regulations adopted pursuant thereto, the filing instructions for the preparation of a combined report, and related corporation tax forms and instructions.

21. The business income subject to apportionment that was the basis for the Board's assessment was determined by the Board from information contained in consolidated financial statements for the Alcan Group Companies as reflected in Alcan's published annual reports prepared for shareholders, information contained in form "10-Ks" filed by Alcan with the United States Securities and Exchange Commission, and other information submitted by AlcanCorp which was obtained from Alcan. The consolidated financial statements contained in Alcan's annual reports were certified by an independent certified public accounting firm of Price Waterhouse and Company as fairly representing the financial position of the Alcan Group Companies in accordance with Canadian generally accepted accounting principles (GAAP). Copies of "Form 10-Ks" filed by Alcan for the years 1971, 1977 and 1978 are attached hereto as Exhibits XI-1 through XI-3, respectively. Annual reports prepared by Alcan for the years 1965, 1966, 1967, 1968, 1969, 1970, 1971, and 1980 are attached hereto as Exhibits XII-1 through XII-8, respectively.

22. For purposes of computing the income attributable to California activities, the Board began with the net

income before taxation as reflected in Alcan's annual reports and adjusted it to eliminate Alcan's equity interest in corporations 50 percent or less owned. Information for this adjustment was also set forth in the annual reports. To arrive at business income, sometimes adjustments were made to eliminate gains or losses reflected in the annual reports from the disposition of various assets which were classified as nonbusiness assets. Further adjustments were made to business income for all years to provide for the use of percentage depletion and accelerated depreciation based upon data supplied by AlcanCorp which it obtained from Alcan. Attached as Exhibit XIII is a chart showing the adjustments requested and adjustments made by the Board as described in paragraphs 20 and 21.

23. Business income has not been adjusted except as hereinabove described. For some of the years adjustments have been requested to allow for the use of the LIFO method of accounting for inventories for entities other than AlcanCorp, to eliminate equity interests of Q.A.L., Rio, el Norte and Halco included in the cost of goods sold, to eliminate unrealized currency exchange gains or losses not reflected separately in the published reports to shareholders and to eliminate the income of sea transportation companies. No adjustments were made for these items by the Board either because the Board believed that the time had elapsed for making a request for such adjustments, data deemed sufficient by the Board for making such adjustments was not submitted, or because the parties disagreed as to the manner in which the adjustments should be made. The correctness of the Board's position

with respect to such requested adjustments is not conceded by AlcanCorp.

24. The procedure followed to determine the accelerated depreciation adjustment for the Alcan Group Companies (other than AlcanCorp) is set forth below:

- a) Depreciation calculated on a straight line basis was reflected in Alcan's published annual reports.

For purposes of the calculation it was assumed an average rate of book depreciation would be 5 percent.

- b) Asset additions for the year for Aluminum Company of Canada, Limited (ACOC) were obtained from the capital cost allowance schedule from its Canadian Federal tax returns. AlcanCorp's additions were taken from its U. S. Federal 1120 tax returns. Asset additions for Indian Aluminum Company and Alcan Aluminiumwerke GmbH were obtained from schedules forwarded to Alcan's tax department by the foreign subsidiaries of Alcan. The sampled additions constituted approximately 70% of the total Alcan Group Companies' acquisitions for the year.

The dispositions were obtained by AlcanCorp from Alcan's tax department in Montreal.

- c) ACOC's assets were reclassified from their Capital Cost Addition Schedule into Asset Depreciation Range (ADR) categories by the Alcan and AlcanCorp tax department personnel by comparing the written descriptions of the Canadian and U. S. tax depreciation guidelines.

- d) Mid-range ADR class lives were utilized.

- e) A weighted average effective depreciation rate was calculated, based on the foregoing information. This weighted average rate was applied to the

Alcan Group Companies' total asset additions for the year.

- f) Additional depreciation equal to the difference between the ADR allowable depreciation and straight line depreciation was allowed (after certain adjustments for recoveries on disposition).

- g) The additions from years prior to 1965 were not included in the accelerated depreciation calculation. No accelerated depreciation was computed for assets acquired prior to the year 1965.

25. AlcanCorp asserts, and the Board does not contest, that the total costs incurred by AlcanCorp in collecting the data and performing the calculations described in paragraph 24 were as follows:

i) Travel to Montreal, Quebec, the source of necessary data	\$450.00
ii) Accommodations spent in Montreal, Quebec	\$350.00
iii) Time spent in Montreal, Quebec	32 hours
iv) Time spent in U.S.	120 hours

The total costs incurred by Alcan and its non-U.S. subsidiaries are as follows:

i) Time to collect data contained outside the U.S. and Canada	800 hours
ii) Time to collect and collate data in Canada	75 hours

26. The denominators of the apportionment factors utilized by the Board were calculated as follows:

a) The denominator of the property factor was calculated by adding the total value of the Alcan Group Companies' fixed assets, valued at original cost, to the value of inventory, and deducting therefrom the value of construction in progress. All of this data was set forth in Alcan's published annual reports. In addition, rent paid by the Alcan Group Companies was capitalized at eight times and added to the owned assets. AlcanCorp supplied the amount of total rents to the Board for each year which it obtained from Alcan. The property factor has not been adjusted, nor has AlcanCorp requested any such adjustments, for

- i) Unamortized goodwill
- ii) Idle facilities
- iii) Fixed assets of shipping companies²
- iv) Assets used by the Alcan Group Companies which were government owned.

b) The denominator of payroll factor for the Alcan Group Companies was obtained by AlcanCorp from Alcan for each year and was provided to the Board. AlcanCorp has recently discovered that the data provided to the Board was based on accrued compensation including fringe benefits rather than wages and salaries. The amount of fringe benefits are unknown and unavailable, but to the extent they were included they would increase the denominator of the payroll factor, resulting in a reduction of the California payroll factor, the amount of income apportioned to California, and AlcanCorp's resultant California tax liability.

² See footnote 4, *infra*.

c) The denominator of sales factor included all sales of the Alcan Group Companies, which sales were taken from the published annual reports. This number has not been adjusted for unrealized exchange gains and losses.

27. For all years 1965 through 1978 the Board's calculation of AlcanCorp's California tax liability was based upon a determination that AlcanCorp was part of the unitary business conducted by the Alcan Group Companies. A summary of the calculation of AlcanCorp's California tax liabilities is attached as Exhibit XVIII. For the years 1971, 1977 and 1978 the calculations are as follows:

	1971	1977	1978
Alcan Group Companies' Business Income	\$52,243,637	\$286,050,938	\$453,739,456
AlcanCorp's California Apportionment Percentage	1.758%	1.1562%	1.0825%
AlcanCorp's California Business Income	918,443	3,307,321	4,911,730
Interest Offset	- - -	- - -	- - -
Income Taxable to California	918,443	3,307,321	4,911,730
Tax Rate	7%	9.0%	9.0%
Tax	64,291	297,654	442,056

28. The additional taxes determined to be due from AlcanCorp by the Board were principally due to the Board's conclusion that AlcanCorp was part of the unitary business conducted by the Alcan Group Companies, requiring the use of a combined report including the business income and factors of the unitary business.

29. AlcanCorp has paid the additional assessments and has pursued administrative remedies with the Board regarding the Board assessments for the years 1965 through 1974, and has instituted suits for refund as authorized by California law. AlcanCorp did not elect to petition the Board for relief under the provisions of California Revenue and Taxation Code section 25137. AlcanCorp contends in those actions, inter alia, as here, that inclusion in the formulary apportionment of the Alcan Group Companies foreign (to the U.S.) income and activities is violative of the U.S. constitution. Copies of AlcanCorp's state court complaints covering the years 1965 through 1971, and 1972 through 1974 are attached hereto, respectively, as Exhibits XIX-1 and XIX-2. Said actions are presently pending.

30. Income which has been properly reported for financial reporting purposes under either Canadian or United States GAAP can, with adjustments, generally be used for tax purposes.

31. Some differences between pre-tax financial income and business income subject to apportionment by California are as follows:

- a) Amortization of amounts expended for
 - i) goodwill
 - ii) trademarks and trade names

- b) Equity income
- c) Self insurance reserves
- d) Initiation fees - Country Clubs
- e) Gifts to Employees
- f) Life Insurance Premiums - Officers
- g) Foreign exchange gains and losses
- h) Non-business income
- i) Contingency reserves

In addition, adjustments to pre-tax financial income may be elected in computing business income subject to apportionment by California in the following areas:

- a) Depletion
- b) Depreciation
- c) Inventory accounting
- d) Legal fees - Acquisition
- e) Start-up expenses
- f) Organizational expenses
- g) Construction Period Interest and Taxes
- h) Software costs

The following items should be treated in an identical manner in computing pre-tax financial income and business income subject to apportionment by California.

- a) Bond issuance costs
- b) Capitalized leases

Any of these adjustments referred to in this paragraph are subject to the provisions of California Administrative Code, title 18, section 25137-6(e).

32. In preparing a combined report to compute its California income a taxpayer may, but is not required, to elect various tax accounting methods which differ from accounting methods employed for financial accounting purposes. In making such election, AlcanCorp might require the assistance of Alcan.

33. If Alcan were to calculate the accelerated depreciation, LIFO and other Schedule M item adjustments possible for the Alcan Group Companies and the denominators of the apportionment factors, Alcan would require each of its reporting entities to submit additional information to comply with methods set forth in subparagraphs A, B, and C hereof. The Board does not agree that additional information would be necessary or that the methods described in this stipulation are the exclusive means for making such adjustments or calculating the denominators of the apportionment factor. Alcan's subsidiaries maintain such records as it or its independent auditors may require in order to consolidate the accounts of the subsidiary companies with those of Alcan for financial accounting purposes in Canada and to allow management to monitor the subsidiaries' operations. In order to obtain the information in the required format, Alcan has established a uniform Chart of Accounts and provided directions to the subsidiaries for submission of the data it requires to file consolidated financial statements in accordance with Canadian generally accepted accounting principles. The subsidiaries of Alcan report their financial data to Alcan on the Uniform Financial Statements ("UFS"), attached hereto as Exhibit XIV. Some subsidiaries consolidate the data of several of their reporting entities into the data represented on the UFS.

For example, one subsidiary in England filed a consolidated UFS for 50 entities, another in Brazil included 7 entities in a single UFS, and one UFS was filed for 10 Indian companies. The subsidiaries also keep their books and records in accordance with the accounting rules of their host countries. These books and records of the subsidiaries are maintained at their various headquarters' locations throughout the world.

A. Under one possible method Alcan might elect to calculate accelerated depreciation, each reporting location around the world would be required to analyze its property, plant and equipment accounts using the asset depreciation range classes as defined for California tax purposes (identical to federal ADR classes). Each year the following analyses by asset class would have to be submitted:

- 1) additions (assets placed in service) during the year
- 2) original cost of assets retired during the year, segregated between ordinary and extraordinary retirements
- 3) proceeds of disposals of assets during the year, segregated between ordinary and extraordinary retirements

Alcan's Consolidated Accounting Department would have to summarize the information received and calculate the amount of the accelerated depreciation adjustment. Subsidiaries other than those whose records are kept in the currency in which Alcan reports for financial purposes (U.S. dollar), would have to keep a second set of records of its fixed assets in order to provide accurate information for the accelerated depreciation calculation.

B. AlcanCorp utilizes one of the several permitted procedures to compute the LIFO valuation of its inventories. If an election were made to compute LIFO inventory values for other members of the Alcan Group Companies by the AlcanCorp method, Alcan would make the calculation in either of two ways. Alcan would require each reporting location to perform the calculation and advise Alcan of the amount of the adjustment. If each subsidiary is required to recalculate its inventory using the LIFO method, it would have to reverse any market writedowns and/or inventory reserves included in its closing inventories and restate its local currency inventories according to Canadian GAAP. Alcan would summarize the information received from the subsidiaries and make the appropriate adjustments to inventories and cost of goods sold.³ In addition, Alcan would have to recalculate the intercompany profit elimination using the LIFO method. Alternatively, Alcan would request specific information from each subsidiary and calculate the adjustment at the Montreal Office. If Alcan were to calculate the amount of the LIFO adjustment, each reporting location would have to submit the following information in both local currency and Alcan's currency for financial reporting purposes:

- i) closing inventory at average cost
- ii) closing inventory at average cost at preceding year end

³ There are approximately the same number of subsidiaries reporting inventories as reporting property, plant and equipment. However, as in the case of fixed assets, one subsidiary reporting to Alcan may be comprised of many separate subsidiaries.

- iii) closing inventory at earliest acquisition or produced cost

Alcan would then have to calculate the amount of the LIFO adjustment for each inventory pool and summarize to arrive at the total adjustment. Alcan would still have to recalculate the intercompany profit elimination using the LIFO method.

C. Alcan would have to undertake collections of data involving differing degrees of administrative burdens for each of the following categories of information to make adjustments to arrive at business income as defined by California.

- 1. Currency translations gains/losses.
- 2. Nonbusiness income such as rents, royalties, interests and dividends.
- 3. Shipping company income.⁴
- 4. Schedule M Adjustments – California's Franchise Tax starting point is a corporation's Federal taxable income before net operating loss deduction and special deductions. Therefore, Alcan would have to determine other adjustments to arrive at taxable income under the Internal Revenue Code ("Schedule M Adjustments"). This category includes timing and permanent adjustments from book to taxable income that would involve thousands of separate adjustments on a worldwide basis.

Schedule M adjustments would include but not be limited to the following:

⁴ The parties do not agree conceptually on how this adjustment should be made.

Depletion
 Legal Fees - Acquisitions
 Bond Issuance Expenses
 Start-up Expenses
 Software Expenditures
 Goodwill
 Organizational Expenditures
 Trademarks and Tradenames
 Construction Period Interest and Taxes
 Equity Income
 Contingency Reserves
 Self-Insurance Reserves
 Capitalized Interest
 Capitalized Leases
 Foreign Exchange Gains and Losses
 Dividends
 Initiation Fees - Country Clubs
 Gifts to Employees
 Life Insurance Premiums - Officers

Adjustments were allowed by the Board with respect to Depletion, Equity Income and an exchange gain (resulting from the conversion of Alcan's financial statement income for 1970 from Canadian to U.S. dollars [see para. 31] reflected in Alcan's annual reports. Whether any other Schedule M adjustments would be applicable with respect to the Alcan Group Companies or they would increase or decrease business income subject to apportionment is unknown. No Alcan Group Companies operating outside of the U.S. have the need to accumulate and process the data necessary to actually calculate LIFO, Accelerated Depreciation, other Schedule M adjustments of apportionment factors.

5. Apportionment factor data not readily obtainable such as salaries and wages and rental expense.

34. The methods described by Alcan are not the only methods for calculating these adjustments. The

Board has accepted alternative methods and in this case has accepted a different method for calculating accelerated depreciation as detailed in paragraph 22. The practice of the Board, with respect to such adjustments, is set forth in Exhibit XV.

35. If it be assumed that Alcan must do all of the acts detailed in paragraph 33 and in Exhibit XVI, then said Exhibit XVI contains a reasonable estimate of costs for doing so. The Board does not concede that Alcan must do the acts so detailed. None of these costs, other than those described in paragraph 25, have been incurred.

36. Data necessary to make the adjustments described in 33 would also be required of any U.S. corporation with foreign activities which made such adjustments.

37. Alcan stock is traded publicly in the United States. Foreign companies whose stock is traded on a national exchange are required to register with the Securities and Exchange Commission and thereafter to file yearly information statements. For financial reporting purposes both the initial and the yearly statements may be expressed in accord with the generally accepted accounting practices (GAAP) of the country of corporate domicile. However, in such cases a reconciliation of the foreign to U.S. GAAP is required.

38. Beginning in 1970 the consolidated financial statements in Alcan's annual reports were prepared in United States dollars. For years prior to 1970 the consolidated financial statements were prepared in Canadian Dollars. Alcan's reason for changing to United States dollars was explained in its Form 10-K filed with the U.S.

Securities and Exchange Commission for the fiscal year ending December 31, 1970. (See Exhibit XVII hereto.)

39. Set forth below in columns B and C, respectively, is the Alcan Group Companies' preapportioned income for financial reporting purposes in U.S. dollars and the Alcan Group Companies' business income used by the Board to determine AlcanCorp's franchise tax. Also shown in column D is AlcanCorp's U.S. federal taxable income or loss. AlcanCorp's taxable income for United States federal income tax purposes was calculated on the basis of its separate books and records, excluding Luxfer.

(000's omitted)
ALCAN GROUP COMPANIES*

		ALCANCORP	
(A)	(B)	(C)	(D)
Year	Worldwide Financial Pre-Tax Income Per Annual Report	Worldwide Pre-Tax Income Determined By Board	Federal Taxable Income (Loss)
1965	Can.\$ 128,908	\$105,754	(\$ 2,847)
1966	Can.\$ 144,679	115,587	(1,923)
1967	Can.\$ 117,174	85,452	(4,283)
1968	Can.\$ 138,807	92,935	(3,926)
1969	Can.\$ 164,122	108,607	(9,917)
1970	128,971	68,962	(3,204)
1971	102,758	52,243	(141)
1972	79,420	37,789	3,706
1973	109,936	67,428	1,614
1974	224,517	178,456	12,839
1975	69,315	NOT AUDITED	(6,746)
1976	96,398	48,827	9,250
1977	336,768	286,051	(241)
1978	497,521	453,739	61,399

* All amounts are in United States dollars unless otherwise noted.

40. The income for the Alcan Group Companies as set forth in column B of paragraph 39 has been determined under Canadian Generally Accepted Accounting Principles ("GAAP").

41. The difference between Alcan Group Companies' pre-tax financial income per annual report (column B above) and the business income subject to apportionment determined by the Board (column C above) set forth in paragraph 39 results from deductions for the following factors:

Adjustment for Percentage Depletion⁵
Deduction for Accelerated Depreciation
Conversion from Canadian Dollars into U.S.
Dollars⁶
Elimination of Equity Income
Deduction for Nonbusiness Income
Schedule M Adjustments for AlcanCorp

42. The income for the Alcan Group Companies, as reported in published financial statements, was derived from the results of the individual member corporations of the Alcan Group Companies. Alcan represents and the Board does not contest that the pre-tax income of the individual companies reflected on their separate books and records adjusted to Canadian GAP and the income and withholding taxes paid to each entity's host jurisdiction are as set forth below:

⁵ See paragraph 24.

⁶ For the years 1965-1969, Alcan presented its consolidated financial statements in Canadian dollars. The Board translated these amounts into U.S. dollars.

1971
(in thousands of U.S. Dollars)

<i>Company Name</i>	<i>Pretax Income Calculated from Separate Books And Records Before Adjust- ments*</i>	<i>Income and Withholding Taxes Paid to Host Jurisdictions*</i>
<i>U.S.A.</i>		
Alcancorp	(2551)	(75)
Aluminium Limited, Inc.	(23)	-
<i>Canada</i>		
Alcan	(1868)	1362
Alcan Building Products	(247)	25
ADH	1465	(170)
Fiduciaries	119	43
Alfin	208	
Alatina	(395)	
Alingot	575	
Alcanint	164	50
Alcanore	124	
Alcanpipe	29	
Alcan R&D	(289)	107
Secretariat	47	
Alships	107	54
A&J	269	137
Alsco Group	297	232
ACOC	18083	5836
Algoods	(103)	

* A negative figure in column 1 an operating loss for the company.

A negative amount in column 2 indicates an overpayment of current or prior year's taxes.

Canfoils	4537	
Chagterms	485	255
Dusco	7	
Essex	(229)	
Magcan	167	85
Morfoils	(6)	
R&S	47	
Sagpower	2987	1562
Sagships	3516	1472
Sagterms	(23)	90
Sagtrans	1654	799
Seaba	1089	431
Westpro	-	
Alcanaf	-	
Alservices	(1)	
<i>Europe</i>		
Alcanital	(1392)	
Alcan Geneva	717	95
Alraeren	1314	423
Alcan: London	(6408)	
Alcan Booth	(8626)	
Alcaneur	(359)	
Alfino	(72)	
Alcanfolien	373	28
Almet	9111	
Alcansa	1100	260
Alcan-Schwartz	210	22
Alcanuk	7401	(268)
Alcanfran	463	237
Alcanwerke	(8615)	0
Aluminord A/S	(1143)	
Alcanac	(1703)	100
A/S Kinservik	251	
Le Mesnil S.A.	18	
Sagships UK	158	53
Sabap	755	374
Rorschach	1299	256

Latin-America

Albralam	(7)	
Aluruguay	146	
Alcanbrasil	4041	549
Almexsa	1357	518
Alcanmex	1	
Alcanven	365	86
Alcancali	451	202
Nordeste	(285)	
Aluminas	4544	388
Alucaldas	(13)	
Bauxita	2	
Fluorita	-	
MRN	(18)	
Rio Preto	(1)	0
Saref	10	
Alempree	(2)	

Africa

Acosa	303)	103
Alcansaf	2565	906
Alupak	(1)	
Flag	303	
Ghanal	11	77
Ind. Housing	8	
Ralco	306	
Ralco Properties	11	

Caribbean

Alcan Bermuda	1525	66
Aljam	13435	3711
Alprojam	44	
Demba	2539	2476
Sprostons: Jamaica	1274	404
Sprostons: Guyana	459	316
Sprostons: Trinidad	100	33

East Pacific

Alimasia	3	
Alcanasia H.K.	2325	1452

Alcanmalay	349	
Alcansea	165	34
Indal	11563	2596
Jomis	628	334

South Pacific

Alcanaust	3650	
Alzealand	1890	939
Alqueen	5405	2485
Alucon	74	45
Alfoils	50	
Austaluco	(507)	
Austrabaux	109	49
Breit	5	35
Gunnensen	(9)	
Kawneer	(74)	
Others	153	36

<i>Cumulative Sub-Total</i>	84345	31715
<i>Consolidating</i>		
<i>Adjustments</i>	8715	6606
	93060	

Plus:

Equity Income of
companies owned
20-50%

9698

-

Pre-Tax Income Per
Financial Statements 102758

Total Current Income Tax
Provision and Withholding
Taxes paid

38,321

1977
(in thousands of U.S. Dollars)

<i>Company Name</i>	<i>Pretax Income Calculated from Separate Books And Records Before Adjust- ments</i>	<i>Income and Withholding Taxes Paid Host Juris- dictions</i>
<i>U.S.A.</i>		
Alcancorp		
Consolidated	6899	1070
Luxfer (U.S.A.)	1179	502
<i>Canada</i>		
ADH	(134)	(17)
Airmaster	(33)	7
Alafrique	7	7
Alamo	96	9
Alcan	(4926)	5824
ACOC	133583	(130)
Alcan Project	14	7
Alcanint	677	270
Alcan R&D	(405)	8
Alcantrade	88	83
Allabs	(92)	58
Alpac	711	731
Alsco (1974) Inc.	(13)	
Alsco Maritimes	(3)	
Alservices	(14)	7
Alships	304	151
Chagterms	328	184
Fiduciaries	93	55
Revalex	111	92
Alcanasp	(53)	
R&S	547	
Sagships	3931	1854
Seaba	(61)	(88)
Truseal	(33)	
Venchem	1640	

Europe

Aesuk	11	(53)
Alcanac	9172	3048
Alcan Booth		
Consolidated	4362	
Alcaneur	6829	1252
Alcanfolien	708	(3)
Alcanfran	818	5
Alcan: Geneva	1566	
Alcan Ireland	113	
Alcanital	(493)	66
Alcan: London	1128	32
Alcansa	1121	152
Alcan-Schwartz	226	109
Alcanuk	35291	2355
Alcanwerke	4953	8564
Alfino	1795	12
Almaneur	(3)	
Almet	7783	
Alraeren	1005	359
Folien: Berlin	(19)	
Lamal	207	46
Luxfer (U.K.)	1083	16
Nuernberg	4063	
Rorschach	3930	336
Sabap	1332	592
Sagships: U.K.	124	50

Latin America

Alatina Consolidated	57519	12681
Alcancali	1224	791
Alcanven	285	615
Almexsa	4601	3019
Aluruguay	1584	487
Fluorita	275	

Africa

Alcanigeria	2686	1289
Flag	2265	1028
Ghanal	2085	1080

Holdings	20	12
<i>Caribbean</i>		
Alcan Bermuda	3225	
Aljam	2905	87
Alprojam	149	234
Champlain	2112	69
Sprostons: Jamaica	(694)	62
Sprostons: Guyana	302	111
Sprostons: Trinidad	134	67
<i>East Pacific</i>		
Alcanasia H.K.	1985	433
Alcando	1224	
Alcansea	(7)	
Alcanthai	1213	447
Indal	13244	8239
Jomis	2333	1179
<i>South Pacific</i>		
Alcanaust	11086	5049
Alqueen	7712	727
Alzealand	2838	1000
Austrabaux	128	62
Australuco	(121)	30
Breit	(22)	(11)
Gunnerson	1	4
Kawneer	34	20
Quintrex	251	16
Cumulative Sub-Total	354132	66,485
Less:		
Consolidating Adjustments	19310	(11,871)
Plus:		
Equity Income of Companies 20-50% owned included in cost of goods sold	1946	-

Pre-Tax Income Per Financial Statement	<u>336768</u>
Total Current Income Tax Provisions and Withholding Taxes Paid	<u>54,614</u>

1978
(in thousands of U.S. Dollars)

Company Name	Pretax Income Calculated from Separate Books And Records Before Adjustments	Income and Withholding Taxes Paid Host Jurisdictions
<i>U.S.A.</i>		
Alcancorp Consolidated	62388	29116
Luxfer (U.S.A.)	2475	1339
<i>Canada</i>		
ADH	(116)	(11)
Adminco	5	3
Airmaster	132	
Alafrique	22	22
Alamo	90	47
Alcan	768	5923
Alcanasp	(5)	
Alcan: Canada (ACOC)	217349	17409
Alcan Project	12	6
Alcanint	1052	747
Alcan R&D	(49)	8
Alcantrade	809	409
Allabs	353	175
Alpac	1173	610
AlSCO (1974) Inc.	(12)	
AlSCO Maritimes	40	
Alservices	(5)	1
Alships	166	87

Chagterms	85	43
Fiduciaries	64	47
Revalex	(175)	(40)
R&S	1236	464
Sagships	5563	2798
Seaba	262	5
Tple Victoria	(40)	
Truseal	205	
Venchem	1587	
Vic Metal	335	25
<i>Europe</i>		
Alcana	5931	1842
Alcaneur	(7324)	1453
Alcanfolien	735	
Alcanfran	3016	942
Alcan: Geneva	2049	172
Alcan Ireland	(1746)	24
Alcanital	212	75
Alcan: London (merged)	42164	(1670)
Alcansa	(1915)	
Alcanwerke	19238	9433
Alfilage	406	193
Alfino	(1754)	12
Almet	5972	(4)
Alraeren	1263	
Folien: Berlin	210	
Nurenberg	3321	
Rorschach	6177	559
Sabap	854	205
Saguenay U.K.	203	47
Technal	596	434
<i>Latin America</i>		
Alatina Consolidated	49033	10418
Alcanmex	21	6
Almexsa	6435	3417
Aluruguay	1906	405
Alcanigeria	2539	1083
Flag	469	311

Ghanal	627	378
Holdings	(899)	(9)
<i>Caribbean</i>		
Alcan Bermuda	2202	
Alcantrade: Bermuda	(34)	
Aljam	13066	85
Alprojam	71	225
Champlain	3415	89
Sprostons: Jamaica	153	369
Sprostons: Guyana	311	49
Sprostons: Trinidad	444	223
<i>East Pacific</i>		
Alcanasia H.K.	4335	715
Alcanindo	341	(13)
Alcanthai	1014	382
Alimeast	299	
Indal	20224	4433
Jomis	2011	966
<i>South Pacific</i>		
Alcanaust	16110	5792
Alqueen	9967	4706
Alzealand	3683	1365
Australaux	27	9
Australuco	60	45
Breit	(3)	5
Fabricators	77	110
Gunnerson	6	6
Quintrex	(10)	-
Cumulative Sub-Total	513277	108520
Less:		
Consolidating Adjustments	(19052)	(3591)
Plus:		
Equity Income of Companies 20-50%		

owned included in cost of goods sold	3296	-
Pre-Tax Income Per Financial Statement	497521	
Total Current Income Tax Provisions and Withholding Taxes Paid		104929

43. The Alcan Group Companies' current income tax provision (excluding provisions for deferred taxes) for Canadian, other foreign taxes (including withholding taxes) and United States taxes was as follows:

U.S. DOLLARS				
Year	Canadian Income Tax	Other Foreign Income Tax	United States Income Tax	Total
1965	33,599	20,887	\$ *	\$ 54,486
1966	24,358	28,137	(2,159)	50,336
1967	20,283	20,109	*	40,392
1968	39,117	24,122	(2,645)	60,594
1969	40,713	29,779	(2,562)	67,930
1970	18,767	31,734	200	50,701
1971	11,739	26,657	(75)	38,321
1972	2,617	29,151	489	32,257
1973	7,611	42,404	205	50,220
1974	5,514	43,619	3,927	53,060
1975	5,970	23,010	(2,379)	26,601
1976	(3,135)	59,584	3,630	60,079
1977	(9,681)	62,723	1,572	54,614
1978	19,047	55,427	30,455	104,929

* For years 1965 and 1967, the United States Tax Provision is included in the Other Foreign Income Tax Provision.

44. Prior to 1972 Canada included in income for income tax purposes all dividends but allowed a deduction for dividends from foreign subsidiaries where more than 25% of the voting shares were owned directly by the Canadian taxpayer. After 1971, dividends from foreign subsidiaries are deductible to the extent the dividends were from qualified earnings and a tax treaty between Canada and the country of residence of the payer was in force. A deduction for foreign taxes paid was allowed by Canada after 1971 in respect of dividends not entitled to a deduction per se.

45. Attached as Exhibit XX is a chart showing Federal taxable income, California taxable income, and taxable income (post apportioned income) by the other states taxing AlcanCorp for the years 1971, 1977 and 1978.

46. In computing AlcanCorp's California income under the unitary apportionment method of accounting all of the business income and all of the apportionment factors of more than 50 percent but less than wholly owned companies are included. It is unknown whether including such companies in the worldwide unitary apportionment increases or decreases the amount of income assigned to AlcanCorp's operations and activities in California.

47. The acquisition of the Riverside plant increased AlcanCorp's absolute and comparative presence in California as reflected by the three apportionment factors. As a result of this increase, a greater portion of the results of the unitary business of which AlcanCorp is a member were assigned to California.

48. In the years 1971 and 1977 the separate books and records maintained by AlcanCorp reflected losses of \$3,482,952 and \$478,429, respectively, for the Riverside facility. The income of the unitary group attributed to California due to the factors associated with the Riverside operation was \$956,866 and \$154,754, respectively.

49. During Alcan's operation of the Riverside Plant the factors of the plant increased the unitary business's income attributable to California by approximately \$15,000,000. During the same period the separate books and records maintained by AlcanCorp reflected a loss of \$5,000,000.

50. Pursuant to a consent order with the Justice Department, AlcanCorp was obligated to sell the Riverside Plant but was unable to do so. The facility was dismantled and closed down by AlcanCorp in 1977. Management's rationale for closing the Riverside facility is contained in the Request for Authorization attached hereto as Exhibit XXI.

51. Some significant accounting changes which have taken place are:

CANADIAN

- 1970 Prior to 1970 Alcan presented its consolidated financial statements in Canadian dollars. Beginning in 1970, Alcan's accounts have been translated into United States dollars. The U.S. dollar is the principal currency of international trade and of the Alcan Group Companies' business.
- 1979 A recommendation of the Canadian Institute of Chartered Accountants (CICA) Section 1650 (basically similar to FAS 8) changed the method

of translating long-term monetary assets and liabilities into U.S. dollars. Unrealized exchange gains and losses were deferred and amortized over the remaining lives of the related items. (Recommendation was suspended in 1983.)

- 1980 FAS 34 - capitalization of interest payments. In 1980 companies commenced capitalizing instead of expensing the interest costs associated with the financing of projects under construction.
- 1983 CICA section 1650 (similar to FAS 52) changed the method of translating into U.S. dollars the financial statements of foreign subsidiaries with self-sustaining operations.
- 1984 Canadian institute section 3805 introduced new rules regarding the treatment of investment tax credits.

UNITED STATES

- 1976 FAS 5 - Relating to the reporting of foreign currency gains or losses adopted.
- 1977 FAS 13 - Capitalization of leases. Previously all lease payments were charged against profits in the year of payment.
- 1983 FAS 52 changed the method of translating accounts into U.S. dollars.

52. All taxes assessed or proposed to be assessed by the Board were against AlcanCorp. The Board has not sent assessment notices to Alcan or any of the Alcan Group Companies which is not doing business in California. The Board has not directed any correspondence to Alcan or any of the Alcan Group Companies which is not doing business in California.

IT IS SO STIPULATED.

DATED: Jan. 27, 1986 By /s/ Lawrence A. Salibra, II
LAWRENCE A. SALIBRA, II
Counsel for Plaintiff

JOHN K. VAN DE KAMP
Attorney General

EDWARD D.
HOLLINGSHEAD,
Supervising
Deputy Attorney General

DATED: Jan. 16, 1986 By /s/ Derry L. Knight
DERRY L. KNIGHT
Deputy Attorney General
Counsel for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ALCAN ALUMINIUM LIM-)	
ITED; IMPERIAL CHEMICAL)	No. 84 C 6932
INDUSTRIES, PLC)	
Plaintiffs,)	MOTION FOR SUM-
v.)	MARY JUDGMENT OF
THE FRANCHISE TAX)	ALCAN ALUMINIUM
BOARD OF THE STATE OF)	LIMITED
CALIFORNIA, operating)	
through its Chicago Office;)	
LEONARD WILSON, Indi-)	
vidually and as District Man-)	
ager, Chicago Office of the)	
Franchise Tax Board of the)	
State of California; and B.M.)	
RARANG, individually and)	
as Auditor, Chicago Office of)	
the Franchise Tax Board of)	
the State of California,)	
Defendants.)	

Now comes plaintiff Alcan Aluminium Limited and moves for summary judgment in this action pursuant to Rule 56 of the Federal Rules of Civil Procedure. The reasons supporting this motion are found in the Memorandum in Support filed concurrently with this motion and incorporated by reference herein.

Respectfully submitted,

LAWRENCE A. SALIBRA, II
PETER D. MILLER

By /s/ Lawrence A. Salibra, II (PDM)
By /s/ Peter D. Miller

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Dated: January 31, 1986

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Madison, Wisconsin

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL)	
INDUSTRIES PLC,)	
	)	No. 84-C-8906
Plaintiff,	)	(Judge Williams)
)	
v.)	
FRANCHISE TAX BOARD)	
OF THE STATE OF CALI-)	
FORNIA, et al.,)	
)	
Defendants.)	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff, Imperial Chemical Industries PLC ("ICI"), moves for summary judgment on all issues raised in its Complaint filed on October 15, 1984. The ground for this Motion, which will be fully discussed in the Memorandum in Support of Plaintiff's Motion for Summary Judgment, is that the imposition by Defendants of "worldwide unitary income taxation" upon Plaintiff and its subsidiaries is prohibited by the Constitution of the United States.

WHEREFORE, ICI respectfully requests the Court to rule that the imposition by Defendants of "worldwide unitary income taxation" upon Plaintiff and its subsidiaries is prohibited by the Constitution of the United States. On the basis of this ruling, and the applicable law, ICI requests that the Court enter Summary Judgment for ICI and against Defendants on all issues raised in ICI's

Complaint, and, permanently enjoin Defendants from assessing, levying or collecting any tax, the amount of which is determined, in whole or in part, by reference to the worldwide income of Plaintiff and its subsidiaries.

Dated this 31st day of January, 1986.

Respectfully submitted,

/s/ James Merle Carter
One of the Attorneys for
Imperial Chemical Industries PLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL)	
INDUSTRIES PLC,)	
Plaintiff,)	
v.	)	No. 84-C-8906
	)	(Judge Williams)
FRANCHISE TAX BOARD)	
OF THE STATE OF CALI-)	
FORNIA, operating)	
through their Chicago)	
office; and LEONARD)	
WILSON individually and)	
as District Manager, Chi-)	
cago Office of the State of)	
California,)	
Defendants.)	

SUMMARY STATEMENT OF STIPULATED FACTS

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SUMMARY STATEMENT OF STIPULATED FACTS

Plaintiff Imperial Chemical Industries PLC ("ICI") submits this Summary Statement of Stipulated Facts that, together with the Joint Stipulation of Facts and Supplemental Joint Stipulation of Facts filed in this case, constitute the statement of material facts required by Local Rule 12(e).

All of the facts in this case have been stipulated by the parties or are subject to judicial notice. References herein to the Stipulation of Facts and attached exhibits, filed December 2, 1985, are to "Stip. ¶ ____" and "Stip. Ex. ____". Similar references to the Supplemental Stipulation of Facts filed January 31, 1986, are to "Supp. Stip. ¶ ____" and "Supp. Stip. Ex. ____".

A. ICI and Its Subsidiaries

1. ICI is an English public limited company having its principal offices and place of business in London, England. ICI is widely held, having approximately 350,000 shareholders owning stock with an equity value of about 3,800 million pounds sterling. ICI's stock is traded on the London Stock Exchange. Stip. ¶ 2.

2. ICI does not do business in California or elsewhere in the United States. ICI is not subject to the California Bank and Corporation Tax Law. Stip. ¶ 1.

3. ICI has about 400 subsidiaries (over 50% ownership) and about 100 "associated companies" (between 20% and 50% ownership). Stip. ¶ 4; Stip. Ex. 3. ICI Americas Inc. ("Americas") is the principal operating subsidiary of ICI in the United States. Americas is a Delaware corporation that does business in California

and is subject to the Franchise Tax imposed by the California Bank and Corporation Tax Law. Stip. ¶¶ 5 and 6. As used herein the "ICI Group" means ICI and its over 50% owned subsidiaries.

4. Americas is a wholly owned subsidiary of American Holdings Inc. ("Holdings"), itself a wholly owned subsidiary of ICI. Holdings is a Delaware corporation that has never conducted business in California. The sole activity of Holdings is holding stock in subsidiary corporations. Stip. ¶ 6.

5. The business activities of the ICI Group comprise thirteen diverse principal business groupings with a broad range of product lines, e.g., fertilizers, paints, pharmaceutical drugs and crude oil. The main business groupings are: Agricultural; Agrochemicals and Colours; Fibres; General Chemicals; Industrial Explosives; Oil; Organics; Paint; Petrochemicals and Plastics; Pharmaceuticals; Polyurethanes; Plant Protection; and Specialty Chemicals and Materials. Stip. ¶ 3.

6. ICI owns, directly or indirectly, 50% or more of principal manufacturing subsidiaries in the following nations in addition to the United Kingdom: Canada; Argentina; United States; Malaysia; Australia; Japan; New Zealand; Pakistan; and India. Stip. ¶ 4.

7. In 1984, the ICI Group reported gross sales worldwide, eliminating intercompany trading, of 9,909 million pounds sterling. Of this amount, 6,774 million pounds was derived from sales in nations other than the United Kingdom. Gross sales in the United States for the

same year by Americas and its subsidiaries were approximately 12.5% of the worldwide total. All of the Americas' income is taxable for federal income tax purposes and is classified as United States source income under the Internal Revenue Code. Stip. ¶ 5.

8. In July 1971, the stock of Atlas Chemical Industries, Inc., an unrelated Delaware corporation, was acquired by Americas. Atlas was liquidated on September 30, 1971, and Americas thereupon became the parent of a number of Atlas foreign subsidiaries. By September 30, 1975, all of the foreign subsidiaries had been liquidated or sold by Americas to ICI or third parties. Americas has not had foreign subsidiaries since 1975. Americas has not had foreign operations since 1975 except for a limited amount of export sales to foreign countries. Stip. ¶ 7.

9. Since 1971 Americas has conducted business in California principally through operation of a pharmaceutical manufacturing plant in Pasadena as well as other sales and manufacturing activities. Stip. ¶¶ 6 and 8. Americas conducts activities in California at the present time at four separate facilities, with a total of approximately 506 employees. A related company has 71 employees in California. Stip. ¶ 8.

B. *The Board's Unitary Tax Determinations*

10. Defendant, Franchise Tax Board of the State of California ("Board"), is an official agency of the State. The Board's responsibilities include administration, collection and enforcement of the state's corporate income and franchise taxes. Stip. ¶ 9.

11. The unitary apportionment formula used by the Board is a method of determining the amount of income of a taxpayer attributable to and taxable by California. Under this method, all business activities that are deemed to function as a "unitary" business are combined. The combined income is apportioned by a formula that compares activities conducted in California to the activities of the "unitary" business everywhere. Stip. ¶ 15. This requires three steps:

(a) Identification of all activities that constitute a "unitary" business.

(b) Determination of the business income and elimination of all nonbusiness income of the "unitary" business. Nonbusiness income is income that does not arise from the conduct of the "unitary" business (e.g., certain investment income).

(c) Apportionment by formula of the business income of the "unitary" business. The apportionment formula is the average of the ratios of property, payroll and sales of the "unitary" business in California to the property, payroll and sales of the "unitary" business everywhere. Stip. ¶ 15.

12. For income years 1972 through 1981, Americas filed California franchise tax returns. For those years in which Americas reported net income, apportionment to California was made on the basis of the three-factor formula, using California property, California payroll and California sales of Americas as the numerators and all property, all payroll and all sales of Americas as the denominators. Stip. ¶ 10.

13. Americas' taxes payable to California, net of credits, for the income years 1972 through 1981 were reported as follows (dollars) (Stip. ¶ 12):

Income Year Ended	Business Income Loss	Apport. Factor (%)	Calif. Business Income	Tax Rate (%)	Tax
9/30/72	\$(6,819,633)	-	-	min.	\$100
9/30/73	(27,434,974)	-	-	min.	200
9/30/74	19,540,882	3.9248	\$699,722	9.0	62,975
9/30/75	10,974,668	4.4176	484,455	9.0	43,600
12/31/75	(2,038,420)	5.1430	-	min.	200
12/31/76	17,393,771	5.2894	920,010	9.0	82,801
12/31/77	25,926,761	5.0830	1,315,564	9.0	118,401
12/31/78	41,416,104	5.2357	2,166,422	9.0	194,978
12/31/79	2,795,678	5.0342	147,640	9.0	13,287
12/31/80	6,021,966	5.1912	311,757	9.0	28,058
12/31/81	17,475,583	4.9449	869,057	9.6	83,429

14. For income years ending 1972 through 1981, the Board conducted audits of the California franchise tax returns of Americas. The auditors demanded information from Americas personnel relating to consolidating entries of ICI; intercompany transactions of ICI and its worldwide subsidiaries; data on worldwide rentals; worldwide property detail; worldwide construction in progress; worldwide payroll detail; and worldwide sales of ICI and all of its subsidiaries. The auditors also sought information on worldwide research facilities and expenditures of ICI and its subsidiaries. The auditors requested "a breakdown of the California inventory and property at original cost in historical English pounds." Stip. Ex. 12, p. 2 (emphasis added). Americas personnel supplied all information within their possession but requested the Board to contact the London office of ICI for worldwide information.

15. The Board determined that Americas was part of a single, worldwide, unitary enterprise conducted by all members of the ICI Group. Stip. ¶ 13. Based upon this determination, the Board recomputed business income subject to California tax by applying the three factor apportionment using as the apportionment base the assumed worldwide income of the ICI Group. Stip. ¶ 14.

16. The Board's redetermination of Americas' California tax liabilities (disregarding an undisputed credit) for the income years 1972 through 1981, were as follows (in dollars) (Stip. ¶ 19):

Income Year Ended	ICI Worldwide Business Income*	Cal. Apport. Factor(%)	Cal. Bus. Income (\$)	Tax Rate (%)	Rede- termined Tax (\$)
9/30/72	300,945,155	.3254	979,276	7.45	72,956
9/30/73	559,403,136	.2540	1,420,884	7.95	112,960
9/30/74	892,835,033	.2335	2,084,770	9.0	187,629
9/30/75	751,667,365	.2825	2,123,460	9.0	191,111
12/31/75	168,943,576	.2763	466,791	9.0	42,011
12/31/76	892,094,114	.2922	2,606,699	9.0	234,603
12/31/77	853,140,345	.3128	2,668,623	9.0	240,176
12/31/78	878,282,236	.3738	3,283,019	9.0	295,472
12/31/79	1,255,194,918	.3463	4,346,740	9.0	391,206
12/31/80	604,695,081	.3273	1,979,167	9.6	190,000
12/31/81	265,511,942	.3475	922,654	9.6	88,575

* For convenience of the Court, this table shows ICI worldwide business income in U.S. dollars. The actual computations were done by the Board in pounds sterling, with the amount of income apportioned to California also computed in pounds sterling, which was then converted to U.S. dollars for purposes of computing the California tax. Stip. ¶ 19.

17. The increases in Americas' California tax liability resulted almost entirely from the determination by the Board that Americas was part of a "unitary" business conducted by the ICI Group and that use of worldwide formulary apportionment was required to determine properly the ICI Group's California taxable income. Insubstantial adjustments were also made increasing California sales over the amounts reported by Americas. These adjustments had little effect on the amount of tax redetermined. Stip. ¶ 20.

18. After issuance by the Board of Notices of Proposed Assessment and the filing by Americas of a protest, the Board made a small (7%) reduction in the redetermined taxes for the years 1976-1981 by excluding from apportionable income United Kingdom investment grants to ICI. Stip. ¶ 19.

19. In computing the ICI Group's income apportionable to California, the Board began with the consolidated income of the ICI Group shown in the financial statements contained in ICI's published annual reports, expressed in pounds sterling. Adjustments based on information contained in the published annual reports were made by the Board purporting to eliminate exchange rate gains and losses and the earnings of corporations owned 50 percent or less by ICI. Adjustments were also made by the Board to the earnings of ICI purporting to conform the statements to California tax accounting. The Board eliminated nonbusiness income for 1971-1975. For 1976-1980, however, dividends from 50% or less owned subsidiaries of ICI were included as business income. Stip. ¶ 21.

20. The numerators of the factor fractions of the apportionment formula were supplied to the Board by Americas, with adjustments made to reflect sales assigned to California. These amounts were converted by the Board to pounds sterling, using average exchange rates for the year as published by the International Monetary Fund. Stip. ¶ 22.

21. The denominators of the factor fractions of the apportionment formula were derived by the Board from the published financial statements of the ICI Group in ICI's annual reports that are expressed in pounds sterling. Fixed assets (land, plant and equipment) are shown on a consolidated basis in the annual reports, either at original cost or on a revalued basis. If assets are revalued, any changes are reflected in a revaluation reserve that is also shown. Stip. ¶ 23.

22. The inventory of the ICI Group is stated in the annual reports. Because ICI Group rents were not available to be included in the denominator of the property factor, the Board eliminated rentals from both the numerators and denominators of the property factors. ICI Group payroll and sales were taken directly from ICI's published annual reports. Stip. ¶ 23.

23. The California apportionment factor was calculated by averaging the three-factor fractions. The numerator and denominator of each of the fractions was expressed in pounds sterling. The apportionment factor was then applied to the worldwide business income of the ICI Group (as derived from the annual reports of ICI expressed in pounds sterling). The result, business income apportioned to California, was translated into

dollars at the average exchange rates for the year published by the International Monetary Fund and the California tax was then calculated by applying the current rate to such apportioned income. Stip. ¶ 24.

24. Americas paid the additional assessments for 1972-1975 and timely filed claims for refund with the Board. The refund claims contested the Board's assertion that the ICI group conducted a "unitary" business in California. Americas also filed a protest of the proposed assessment, calculated on the same finding, for the years 1976 through 1981. Americas believes that increased assessments for years after 1981, including 1983, a loss year for Americas, are likely to be proposed by the Board on the same unitary basis as earlier years. Stip. ¶ 29.

C. The Board's Information Requests

25. In its audits of Americas, the Board requested Americas to provide extensive accounting data and financial information relating to ICI and other members of the ICI Group. Stip. ¶ 26; Stip. Ex. 8, 9, 11 and 12. Except for information involving Americas transactions and matters published in the ICI annual reports, the requested ICI Group information was not in the possession of Americas. The remaining information was available, if at all, only from ICI. Much of the information requested was not readily available from any source and is outside the scope of ICI's accounting records. Stip. ¶¶ 26 and 31; Stip. Ex. 9.

26. ICI collects and maintains data on the property, payroll and sales of its subsidiaries in a summary form. Detailed supporting data is maintained only at the

subsidiary level. Summary data is collected, aggregated and submitted by the subsidiaries on annual "T" Forms. These "T" Forms are used by the various worldwide subsidiaries of ICI to report annual financial results to ICI in London. The "T" Forms are balance sheets and profit and loss statements conformed to United Kingdom accounting standards, with data that are not necessarily stated at calendar year ends, but at dates determined by the statutory accounting year of the subsidiary. The "T Form" is the only standard financial report submitted regularly to ICI by its worldwide subsidiaries. Stip. ¶ 31.

27. American Depositary Receipts issued by Morgan Guaranty Bank, each representing four ordinary shares of ICI stock, are traded on the New York Stock Exchange. Stip. ¶ 2. ICI files an annual Form 20-F with the Securities and Exchange Commission in respect of the American Depositary Receipts listed on the New York Stock Exchange and certain publicly issued debentures. Notes to the financial statements in these Forms summarize material adjustments to net income and stockholder's equity that will be required if United States Generally Accepted Accounting Principles ("GAAP") were applied instead of United Kingdom principles. For the years shown below, these required adjustments to income are (in pounds sterling):

	1982	1983	1984
U.S. GAAP	157,000,000	286,000,000	614,000,000
U.K. GAAP	<u>145,000,000</u>	<u>378,000,000</u>	<u>585,000,000</u>
Required Adjustment	<u>(12,000,000)</u>	<u>92,000,000</u>	<u>(29,000,000)</u>

The Form 20 does not attempt to reconcile accounting differences between United States GAAP and accounting principles of host nations of ICI's overseas (non-U.S.) subsidiaries. Stip. ¶ 2; Stip. Ex. 2-1 and 2-2.

28. There are significant differences in accounting principles and reporting practices among the United Kingdom and the various nations, including the United States, in which ICI and its worldwide subsidiaries conduct business. The "International Survey of Accounting Principles and Reporting Practices," Price Waterhouse International (Scarborough, Ont. 1979) (the "Survey") identifies several dozen fundamental accounting policies as to which the practices or requirements in sixty-four countries vary widely. Stip. ¶ 32; Stip. Ex. 15. The Survey reports that on some of these points practice is evenly divided worldwide; on others, there is a small but significant minority; on some, what is required in one country is prohibited in another; and on some points in particular, the practice in the United Kingdom differs from that in the United States. A major accounting problem identified by the Survey involves the conversion of transactions from one foreign currency to another. Stip. Ex. ¶ 15.

29. ICI projects that the additional administrative cost of preparing Americas' California franchise tax returns on a worldwide "unitary" basis will be two million pounds sterling initially, plus two million pounds sterling annually. Stip. ¶ 40. The cost of reporting and making accounting adjustments required to conform worldwide information to California accounting includes the cost of maintaining a set of records for ICI and its worldwide subsidiaries to conform to California tax accounting rules and translating the transactions of those

subsidiaries either to United States dollars or to United Kingdom pounds sterling and then to United States dollars. Stip. ¶ 40; Stip. Ex. 22.

D. *United Kingdom Tax Credit*

30. Under United Kingdom tax law, a resident corporation is entitled (a) to (direct) credit for foreign taxes paid on dividends from subsidiaries in overseas countries and (b) to (indirect or "underlying") credit for foreign income taxes paid on earnings out of which the dividends are distributed. United States federal income taxes and California franchise taxes, including franchise taxes computed by combining worldwide income of foreign parents and sister companies, may qualify for the United Kingdom indirect credit. Stip. ¶ 37; Stip. Ex. 19. The credit is subject to two limitations:

(a) No credit can be obtained for dividends paid from years in which the dividend paying subsidiary records a net book loss; and

(b) No credit is allowable in excess of the amount of United Kingdom tax payable on the earnings out of which dividends are paid.

31. As a result of these limitations in United Kingdom law, ICI can never obtain credit for California franchise taxes assessed for years in which Americas incurred a net book loss. Stip. ¶ 37; Stip. Ex. 19. The total of these loss year franchise taxes, based on ICI's foreign (to the United States and California) source income is as follows (in dollars) (Stip. Ex. 21):

<i>Income Year Ended</i>	<i>Total Cal. Tax Assessment</i>	<i>Tax on Americas Income</i>	<i>Tax on ICI Group Income</i>
9/30/72	72,956	100	72,856
9/30/73	112,960	200	112,760
12/30/79	391,206	13,287	377,919
12/28/80*	<u>190,000</u>	<u>28,058</u>	<u>161,942</u>
	<u>\$767,122</u>	<u>\$ 41,645</u>	<u>\$725,477</u>

32. For years in which Americas recorded a net book profit, the amount of United Kingdom tax credit available depends on the effective rate of United States federal and state taxes on the underlying earnings. Any California tax that increases the effective rate of tax above the United Kingdom corporate tax rate will be unrelieved upon repatriation of dividends from that year. For the calendar years 1972 through 1982, the United Kingdom corporation tax rate was 52%. This rate declined to 50% in 1983, 45% in 1984, 40% in 1985, and 35% for 1986. The California tax rate was 7.6% for 1972, increasing to 7.95% for 1973, 9% for 1974 through 1979 and 9.6% for 1981 and later years. The current United States federal rate is 46% on all taxable income where taxable income exceeds \$1,000,000. Prior to 1982, the federal corporate rate was, effectively, 48% on taxable income in excess of \$100,000. Where a unitary tax apportionment increases the taxable income of a United States subsidiary corporation of a United Kingdom company, the result is to increase the effective California tax rate beyond 9.6% for United

* 1982 and subsequent years have not been audited by the Board. The amounts shown in Stip. Ex. 21 for these years are estimates by ICI personnel based on prior years' methodology used by the Board.

Kingdom indirect tax credit purposes since only the book income of the United States subsidiary may be taken into account when computing the amount of foreign tax subject to United Kingdom credit. Stip. Ex. 19.

E. *Foreign Objections to Unitary Taxation*

33. The Board's application of the unitary apportionment formula to determine the California taxes of subsidiaries of foreign corporations that, like ICI, have no connection with California except through stock ownership of a subsidiary doing business in California, has resulted in increasingly vigorous objections from the major trading partners of the United States. From 1980 through 1984 the United States Department of State and Department of the Treasury received communications objecting in various terms to worldwide unitary apportionment from the governments of the United Kingdom, Canada, Australia, the Netherlands, Belgium, Switzerland, West Germany, Japan, and the member states of the European Community. Stip. Ex. 17-1 through 17-14. These statements addressed and objected to worldwide unitary apportionment on grounds of double taxation, costs of compliance, interference with foreign commerce and failure of the United States government to speak with one voice in foreign affairs.

34. In 1985, the United Kingdom enacted legislation authorizing the United Kingdom Treasury to impose retaliatory measures on United States' companies doing business in unitary tax states. This legislation became Clause 27 to the Finance Bill of 1985. The retaliatory measure authorized by Clause 27 is withdrawal of

substantial United Kingdom tax credits to United States companies having 7.5% or more of their property, payroll or sales in a unitary state, or having their principal places of business in a unitary state. The provision may be put into effect at any time by the United Kingdom Treasury, subject to the approval of Parliament. Stip. ¶ 35; Stip. Ex. 18.

35. In the Parliamentary debate on Clause 27, Mr. Moore stated the position of the United Kingdom Government:

I shall try to be brief, but the House will understand that it is essential that I express with great care and clarity the Government's attitude to the clause. . . .

The basic objection to unitary tax is that it is contrary to the internationally accepted principle for allocating profits where a company or group operates internationally The arm's length method is recognized by both the Organization for Economic Cooperation and Development and United Nations, and is enshrined in a worldwide network of bilateral double taxation treaties including the treaties to which the United States is party. It provides a coherent and consistent tax framework for international trade and investment.

For individual companies, as many hon. Members have said, that [unitary tax] means unfair tax bills and excessive compliance costs. It can also produce double taxation. Income earned by the foreign parent of a United States subsidiary is taken into account in the unitary tax bill, and taxes without any relief for overseas tax. Multinational groups can be taxed on more than 100 per cent. of their income in a particular state, and a loss can be turned into a

taxable profit. Another serious objection is the excessive compliance burden imposed by worldwide unitary tax. The method inevitably involves financial information on the worldwide activities of the group, which can be extremely burdensome in practice. [Stip. Ex. 18, p. 11.]

F. *The Federal Government's Response*

36. In response to objections made by foreign governments and others, the United States Government on September 23, 1983, announced the establishment of the "Worldwide Unitary Taxation Working Group", chaired by the Secretary of the Treasury and having members appointed by him as representatives of the federal government, state governments and the business community. Stip. Ex. 16.

37. The establishment of the Working Group was described as follows in its Final Report dated August 31, 1984 (Stip. Ex. 16):

Debate on this issue at the federal level spans at least two decades. In its June 27, 1983, decision in *Container*, the U.S. Supreme Court upheld California's right to apply the worldwide unitary method of taxation to U.S.-based multinationals. The Court reserved judgment on the question of whether the worldwide unitary method could constitutionally be applied to foreign-based multinationals. . . .

On September 23, 1983, Treasury Secretary Regan announced President Reagan's decision to refrain from supporting the motion for rehearing in *Container* and to establish a Working Group composed of representatives of the federal government, state governments, and the business community.

The Final Report of the Working Group identified issues and a series of options for compromise but did not arrive at an overall consensus among its members, leaving further action to the various state legislatures rather than Congress. Stip. Ex. 16, p. 5-6.

38. Part of the Final Report consisted of the Chairman's Report. In transmitting the latter to the President by letter dated July 31, 1984, the Secretary of the Treasury stated:

If states enact legislation based on the three principles agreed upon by the Working Group, the United States will be able to speak with one voice in dealing with its foreign trading partners, and this irritant of international commercial relations will have been eliminated.

If there are not sufficient signs of appreciable progress by the states in this area by July 31 of next year, whether by legislation or administrative action, I will recommend to you that the Administration propose federal legislation that would give effect to a water's edge limitation patterned after that in the Chairman's Report. [Stip. Ex. 16, p. iii.]

39. On November 8, 1985, the President issued a Statement (Supp. Stip. ¶ 1; Supp. Stip. Ex. 23) expressing the Federal Government's support for federal legislation requiring that multinational corporations be taxed only on United States income (the "water's edge" limitation) and addressing the taxation of foreign source dividends for domestic corporations. The Statement instructs the Secretary of the Treasury to initiate the federal legislation and instructs the Attorney General to "ensure that the United States' interests are represented in appropriate

controversies and cases consistent with this approach." Supp. Stip. ¶ 23.

40. In response to the President's instruction, Senator Wilson on December 18, 1985, introduced the "Unitary Tax Repealer Act" (Supp. Stip. ¶ 2; Supp. Stip. Ex. 24). In forwarding the Unitary Tax Repealer Act to the President of the Senate and the Speaker of the House of Representatives by letters dated December 18, 1985 (Supp. Stip. ¶ 4; Supp. Stip. Ex. 25), the Secretary of the Treasury stated:

The practice of a small but important minority of the states of assessing corporate income tax on a worldwide unitary basis has caused serious difficulties with the conduct by the federal government of our foreign economic policy. Virtually all of our major investment partners have objected to state practice in this regard. They point out that the worldwide unitary method departs from the principles of international taxation generally followed in the international community and by the federal government. Furthermore, they claim that imposition of the unitary method on their U.S. subsidiaries creates serious administrative burdens in obtaining and converting to U.S. standards accounting information on the foreign affiliates of the unitary group. Finally they argue that the use of the worldwide unitary method may lead to double taxation of the foreign source income of these foreign affiliates. *We agree with these contentions.* These objections have resulted in the adoption of enabling legislation by the United Kingdom permitting serious retaliatory measures to be taken against U.S. companies. It has become clear that the ability of the federal government to speak with one voice in the conduct of foreign economic affairs is significantly weakened because of these state tax practices. [Emphasis added.]

Arguments of federalism and state fiscal sovereignty are not easily overcome. Due concern for rights of the states dictate that they be granted great leeway to tailor their own systems of taxation. However, in this instance the lack of a solution will certainly yield serious international ramifications, including foreign sovereign retaliation against innocent bystanders. Therefore, the Congress must insert itself into the process in order to avoid a serious disruption of international commerce and so that a solution can be forged.

Senator Wilson's statement introducing the Unitary Tax Repealer Act includes a similar description of the reasons for the bill. Supp. Stip. Ex. 24.

Dated this 31st day of January, 1986:

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IMPERIAL CHEMICAL	) No. 84-C-8906
INDUSTRIES PLC,	) (Judge Williams)
Plaintiff,	) DEFENDANTS'
	) RESPONSE TO
v.	) PLAINTIFF'S SUMMARY
THE FRANCHISE TAX	) STATEMENT OF
BOARD OF THE STATE OF	) STIPULATED FACTS
CALIFORNIA, operating)
through its Chicago office,)
et al.,)
Defendants.)

Although the parties to this action have executed a Joint Stipulation of Facts (twice supplemented), plaintiff has deemed it appropriate to prepare on its own a "Summary Statement of Stipulated Facts." In doing so, plaintiff has inappropriately paraphrased a number of stipulated facts and referred to "facts" that are neither recited in the Joint Stipulation of Facts or otherwise reflected in the record. The particular statements in the Summary in

which such liberties have been taken are set forth below with defendants' comments.

This response to the Summary prepared by plaintiff is not to be construed as necessarily conceding the materiality of all of the facts recited in the Summary. In addition, defendants' response is not to be construed as conceding either that plaintiff has recited all material facts contained in the Joint Stipulation or accurately characterized or described the additional facts set forth in the stipulated exhibits. The interpretation and significance of the stipulated facts and exhibits are matters to be covered in legal argument. The following comments therefore relate only to those statements of plaintiff that inappropriately paraphrase the facts as stipulated or refer to alleged facts that do not appear in the record.

STATEMENT NO. 15

" . . . the Board recomputed business income subject to California tax by applying the three factor apportionment using as the apportionment base the assumed worldwide income of the ICI Group. Stip. ¶14."

Comment:

The word "assumed" does not appear in paragraph 14 of the Joint Stipulation. The comparable sentence reads: " . . . the Board recomputed ICI Am's net income subject to California tax by applying the unitary apportionment method of accounting, using as the apportionment base the worldwide income of the ICI Group." See also Stip., ¶30, which states that for purposes of this

litigation ICI does not contest the factual correctness of the Board's application of the unitary method.

STATEMENT NO. 19

"In computing the ICI Group's income apportionable to California, the Board began with the consolidated income of the ICI Group shown in the financial statements contained in ICI's published annual reports, expressed in pounds sterling. Adjustments based on information contained in the published annual reports were made by the Board purporting to eliminate exchange rate gains and losses and the earnings of corporations owned 50 percent or less by ICI. Adjustments were also made by the Board to the earnings of ICI purporting to conform the statements to California tax accounting. The Board eliminated nonbusiness income for 1971-1975. For 1976-1980, however, dividends from 50% or less owned subsidiaries of ICI were included as business income. Stip. ¶ 21."

Comment:

(1) The opening phrase of this statement obviously is designed to create the impression that the proposed taxes are being asserted against the ICI Group. The opening phrase or paragraph 21 of the Joint Stipulation actually reads: "In computing the income attributable to ICI Am's California activities. . . ."

(2) ICI twice uses the word "purporting." This word does not appear in the stipulated facts.

STATEMENT NO. 24

" . . . Americas believes that increased assessments for years after 1981, including 1983, a loss year for Americas, are likely to be proposed by the Board on the same unitary basis as earlier years. Stip. ¶29."

Comment:

There is nothing in the record with regard to 1983 being a "loss year" for Americas.

STATEMENT NO. 25

" . . . Much of the information requested [from Americas] was not readily available from any source and is outside the scope of ICI's accounting records. Stip. ¶¶26 and 31; Stip. Ex. 9."

Comment:

This statement is unsupported by the record. Paragraph 26 of the Joint Stipulation merely refers to correspondence between the Board and iCI Am and Paragraph 31, to the annual "T" forms filed by ICI's subsidiaries. Exhibit 9 is a follow-up letter from the Board's auditor to ICI Am.

STATEMENT NO. 26

" . . . The "T" form is the only standard financial report submitted regularly to ICI by its worldwide subsidiaries. Stip., ¶31."

Comment:

Paragraph 30 of the Joint Stipulation states that the "T" form is the "basic," not the "only," financial report submitted to ICI by its subsidiaries.

Dated: March 27, 1986

Respectfully submitted,
 JOHN K. VAN DE KAMP
 Attorney General of the
 State of California
 /s/ Patricia Strelloff
 PATRICIA STRELOFF
 Deputy Attorney General
 Attorneys for all Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

IMPERIAL CHEMICAL	) No. 84-C-8906
INDUSTRIES PLC	) (Judge Williams)
)
Plaintiff,)
	) SECOND SUPPLEMEN-
v.	) TAL JOINT STIPULA-
	) TION OF FACTS
THE FRANCHISE TAX)
BOARD OF THE STATE OF)
CALIFORNIA, operating)
through its Chicago office;)
and LEONARD WILSON,)
individually and as District)
Manager, Chicago Office of)
the State of California)

Subsequent to the filing of a Supplemental Joint Stipulation of Facts on 31 January, certain additional facts have occurred that the parties now desire to adduce in this Second Supplemental Joint Stipulation of Facts.

IT IS STIPULATED AND AGREED by the parties through their respective counsel that:

On 30 January 1986, the United States Secretary of State transmitted a letter to the Governor of California concerning Worldwide Unitary Taxation. A copy of this letter is attached as Exhibit 24. This exhibit is incorporated by reference and may be entered into evidence as fact as though proven in open court except as herein expressly provided.

This stipulation shall not be construed as concession by any party of relevancy or materiality of facts stipulated. The parties expressly reserve the right to argue

relevancy or materiality of any of the facts herein recited. This stipulation shall apply only in the above-entitled action and in any appeal from the judgment of this Court.

This Second Supplemental Joint Stipulation is made this 20th day of February 1986.

/s/ James M. Carter
James M. Carter, Attorney
Counsel for Plaintiff,
Imperial Chemical Industries
PLC

John K. Van de Kamp
Attorney General of the
State of California

Edward P. Hollingshead
Supervisory Deputy Attorney
General

By /s/ Patricia Streloff
Patricia Streloff
Deputy Attorney General
Counsel for Defendant
Franchise Tax Board

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Attorneys for all Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALCAN ALUMINIUM	) No. 84-C-6932
LIMITED,	) (Judge Williams)
)
Plaintiff,)
	) DEFENDANTS' CROSS-
v.	) MOTION FOR SUM-
	) MARY JUDGMENT
THE FRANCHISE TAX)
BOARD OF THE STATE OF)
CALIFORNIA, operating)
through its Chicago office,)
et al.,)
)
Defendants.)

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants move for summary judgment in the above-entitled action on the grounds that the Court lacks jurisdiction to entertain this action and that defendants are entitled to judgment as a matter of law. Said grounds are fully discussed in the accompanying Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment.

Dated: March 27, 1986

Respectfully submitted,
 JOHN K. VAN DE KAMP
 Attorney General of the
 State of California
 /s/ Patricia Streloff
 PATRICIA STRELOFF
 Deputy Attorney General
 Attorneys for all Defendants

JOHN K. VAN DE KAMP, Attorney General
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 Attorneys for all Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

IMPERIAL CHEMICAL	) No. 84-C-8906
INDUSTRIES PLC,	) (Judge Williams)
-Plaintiff,)
v.	) DEFENDANTS' CROSS-
THE FRANCHISE TAX	) MOTION FOR SUM-
BOARD OF THE STATE OF	) MARY JUDGMENT
CALIFORNIA, operating)
through its Chicago office,)
et al.,)
Defendants.)

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants move for summary judgment in the above entitled action on the grounds that the Court lacks jurisdiction to entertain this action and that defendants are entitled to judgment as a matter of law. Said grounds are fully discussed in the accompanying Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment.

Dated: March 27, 1986

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General of the
State of California

/s/ Patricia Streloff
PATRICIA STRELOFF
Deputy Attorney General
Attorneys for all Defendants
